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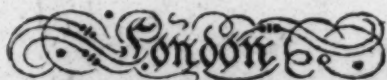
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SUMMARY
OF THE LAW OF
BILLS OF EXCHANGE,
CASH BILLS,
AND
PROMISSORY NOTES.

BY JOHN BAYLEY, ESQ.

BARRISTER AT LAW.

SECOND EDITION.



PRINTED FOR E. AND R. BROOKE, AND J. RIDER,
IN BELL YARD, AND J. BUTTERWORTH,
FLEET STREET.

1799.

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OF THE LAW OF
BILLS OF EXCHANGE

CASH BILLS

PROMISSORY NOTES

BY JOHN BAYLY, ESQ.

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PREFACE

TO THE FIRST EDITION.

THE many modern determinations upon the Law of Bills and Notes, and the importance of an intimate acquaintance with the principles of those determinations, is a sufficient apology for an attempt to collect and methodize them. In the following attempt, what are commonly stiled Bills of Exchange, Cash Bills, and Promissory Notes, are considered together; for a Cash Bill is as much a Bill of Exchange as any Inland Bill, and a Note after a transfer is in legal operation a complete Bill, and must therefore have, when first made, the same essential qualities with Bills.

4 Feb. 1789.

P R E F A C E

TO THE SECOND EDITION.

THE former Edition of this work was a Collection of Principles only, and did not state the Cases from which those Principles were deduced. That statement is now added, and extracts are supplied from such Acts of Parliament as apply immediately to the subject. This is done in the notes, and the text continues as before, except that in some instances principles which had no authorities to support them are expunged, and others which have since been established, are introduced.

Temple,
25th May, 1797.

A

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ERRATA.

In p. 54. the Sentences begining " This Waiver" and " The Obligation" should be transposed.

P. 61. in the Note, l. 13. for " paying" read " buying"

P. 72. in the first line of the last Note, for " Gall v. Walsh," read " Gale v. Walsh."

P. 78. in the 11th line of the first Note for " an acceptance" read " a presentment."

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BILLS OF EXCHANGE AND PROMISSORY NOTES.

C A P. I.

What a Bill and Note is, their Form, and Obligation.

A Bill of Exchange may be defined to be a written order or request, and a Promissory Note a written promise, for the payment of money absolutely and at all events, the one owing its existence and privileges to the law and custom of Merchants, the other to the 3d and 4th Anne, c. 9. (a).

The

(a) Before the Statute of Queen Anne many attempts were made to put Promissory Notes on the footing of Bills of Exchange, but without success, vide *Pearson v. Garrett*, 4 Mod. 242. *Clerke v. Martin*, Lord Raym. 757, Salk. 129. *Burton v. Souter*, Lord Raym. 774 and *Williams v. Cutting*, Lord Raym. 825. Salk. 24. 7 Mod. 154. 11 Mod. 24. and see 4 Term Rep. 151, 152.

By the 3d and 4th Anne, c. 9. §. 1. Whereas it hath been held, that Notes in writing, signed by the party who makes the same, whereby such party promises to pay unto any other person, or his order, any sum of money therein mentioned, are not assignable or indorsable over, within the custom of Merchants, to any other person; and that such person to whom the sum of money mentioned in such Note is payable, cannot maintain an action by the custom of Merchants against the person who first made and signed the same; and that any person to whom such Note should be assigned, indorsed, or made payable, could not within the said custom of Merchants, maintain any action upon such Note against the person who first drew and signed the same; Therefore, to the intent to encourage trade and commerce, which will be much advanced, if such Notes shall have the same effect as inland Bills of Exchange, and shall be negotiated in like manner; Be it enacted, that all Notes in writing, that after the 1st day of May, in the year of our Lord 1705, shall be made and signed by any per-

The person who makes a Bill is called the Drawer, the person to whom it is addressed the Drawee, and the person in whose favour it is made the Payee.

If the Drawee accepts the Bill, he is called the Acceptor.

The person who makes a Note is called the Maker, and the person to whom it is payable the Payee.

When a Bill or Note is indorsed, the person indorsing it, is called the Indorser, the person to whom it is indorsed the Indorsee.

A Note while in the hands of the Payee, has this resemblance to a Bill, that it is for the payment of

son or persons, Body Politic or Corporate, or by the Servant or Agent of any Corporation, Banker, Goldsmith, Merchant, or Trader, who is usually intrusted by him, her, or them, to sign such Promissory Notes for him, her, or them, whereby such person or persons, body Politic and Corporate, his, her, or their Servant or Agent as aforesaid, doth or shall promise to pay to any other person or persons, body Politic and Corporate, his, her, or their Order or unto Bearer, any sum of money mentioned in such Note, shall be taken and construed to be, by virtue thereof, due and payable to any such person or persons, body Politic and Corporate, to whom the same is made payable, and also every such Note payable to any person or persons, body Politic and Corporate, his, her, or their order, shall be assignable or indorsable over, in the same manner as inland Bills of Exchange are or may be, according to the custom of Merchants; and that the person and persons, body Politic and Corporate, to whom such sum of money is or shall be by such Note made payable, shall and may maintain an action for the same, in such manner as he, she, or they might do, upon any inland Bill of Exchange, made or drawn according to the custom of Merchants, against the person or persons, body Politic and Corporate, who, or whose Servant or Agent as aforesaid, signed the same; and that any person or persons, body Politic and Corporate, to whom such Note, that is payable to any person or persons, body Politic and Corporate, his, her, or their order, is indorsed or assigned, or the Money therein mentioned ordered to be paid by Indorsement thereon, shall and may maintain his, her, or their Action for such sum of Money, either against the person or persons, body Politic and Corporate, who, or whose Servant or Agent as aforesaid, signed such Note, or against any of the persons who indorsed the same, in like manner as in cases of Inland Bills of Exchange.

money

money absolutely and at all events, and when transferred it is exactly similar to a Bill of Exchange (*a*).

No particular (*b*) words are necessary to make a Bill or Note; any order or promise which from the time of making it cannot be complied with or performed without the payment of money, is a Bill or Note.

Thus an order or promise to (*c*) deliver, or that I. S. (*d*) shall receive Money, or to be (*e*) accountable

(*a*) In *Heylin v. Adamson*, Burr. 669. The question was, Whether the Indorsee of a Bill was bound to make a demand upon the Drawer as the Indorsee of a Note must upon the Maker, and per Lord Mansfield "while a Note continues in its original shape of a promise from one man to another it bears no similitude to a Bill; but when it is indorsed, the resemblance begins; for then it is an order by the Indorser upon the maker to pay the Indorsee, which is the very definition of a Bill: the Indorser is the Drawer, the Maker of the Note the Acceptor; and the Indorsee, the person to whom it is made payable, and all the authorities, and particularly Lord Hardwicke in a case of *Hamerton v. Mackarell*, M. 10 G. II. put promissory Notes on the same footing with Bills of Exchange." And in *Brown v. Harraden*, 4 Term Rep. 148. where the Court decided that three days grace should be allowed on Promissory Notes, Lord Kenyon observed, That the effect of the Statute was, that Notes were wholly to assume the shape of Bills, and Buller J. added, that the cases cited in the argument shewed clearly, that the Courts of Westminster had thought the analogy between Bills and Notes so strong, that the rules established with respect to the one ought also to prevail as to the other, that the language of the preamble of the Act was express, that it was the object of the Legislature to put Notes exactly on the same footing with Bills, and that the enacting part pursued that intention. The same doctrine is to be found in *Carlos v. Fancourt*, 5 Term Rep. 482. *Eddie v. East India Company*, Burr. 1224.

(*b*) D. Lord Raym. 1397. Str. 629. 8 Mod. 364.

Chadwick v. Allen, Str. 706. A Note was in these words, "I do acknowledge that Sir Andrew Chadwick has delivered me all the bonds and notes for which £400. were paid him on account of Col. Synge, and that Sir Andrew delivered me Major Graham's receipt and bill on me for £10. which £10. and £15. 5s. balance due to Sir Andrew I am still indebted, and do promise to pay," and upon demurrer to the declaration, the court held it a note within the Statute.

(*c*) D. acc. Lord Raym. 1397.

(*d*) D. 8 Mod. 364.

(*e*) *Morris v. Lea*, Lord Raym. 1396. Str. 629. 8 Mod. 362. Plaintiff sued as Indorsee upon a Note by which the Defendant promised to be accountable to

or (a) responsible for it to him or order, is a good Bill or Note.

A Note was (b) in these words, "borrowed of I. S. £50. which I promise *not* to pay: and per Lord Maclesfield, the word *not* shall be rejected, for a man shall never say I am a cheat and have defrauded.

Bills and Notes must be for the payment of money only: an order or promise to pay money *and do some other act* is not a Bill or (c) Note.

And they must be for the payment of money in specie: an order or (d) promise to pay money *in good East India Bonds*, is not a Bill or Note.

On negotiable Bills or Notes made in England, it was till very lately necessary, that the money payable should amount at least to (e) twenty shillings, and unless

A. or order for £100 value received: and after verdict for the Plaintiff it was insisted in arrest of Judgement, that this was not a negotiable Note: sed per cur. no precise words are necessary to be used in a Bill or Note: Deliver such a sum makes a good bill; by receiving the value the Defendant becomes a Debtor, and when he promises to be accountable for it to A. it is the same as a promise to pay to A. and it is the stronger, because it is to be accountable to A. or order, and it would be an odd construction to expound the word accountable, to give an account, when there may be several Indorsees. Judgement for Plaintiff.

(a) D. 8 Mod. 364.

(b) Cited per Lord Mansfield in *Russell v. Langstaffe*, B. R. M. 21 G. III. and in *Peach v. Kay*, sittings after Tr. 1781. and per Lord Hardwicke, 2 Atk. 32.

(c) *Martin v. Chauntry*, Str. 1271. on error from the Court of Common Pleas, the Court of King's Bench held that a Note to deliver up horses and a wharf, and pay money at a particular day, was not a Note within the Statute, and reversed the Judgement which had considered it as such.

(d) *Anon. Buller's Ni. Pr.* 272. a written promise to pay £300 to B. or order in three good East India Bonds, was held not to be a Note within the Statute.

(e) By 15 G. III. c. 51. § 1. (intituled "An Act to restrain the negotiation of Promissory Notes and inland Bills of Exchange under a limited sum, within that part of Great Britain called England," and made perpetual by

unless under certain regulations to (a) five pounds, otherwise they were void, and the person issuing or negotiating them liable to a penalty not exceeding twenty pounds, nor less than five.

These

27 G. III. c. 16.—‘Whereas various Notes, Bills of Exchange and Draughts for Money for very small sums, have for some time past been circulated or negotiated in lieu of cash within that part of Great Britain called England, to the great prejudice of trade and public credit; and many of such Bills and Draughts being payable under certain terms and restrictions, which the poorer sort of manufacturers, artificers, labourers, and others, cannot comply with otherwise than by being subject to great extortion and abuse,’ Be it therefore enacted, that all Promissory or other Notes, Bills of Exchange, or Draughts, or undertakings in writing, being negotiable or transferable, for the payment of any sum or sums of Money less than the sum of twenty shillings in the whole, which shall be made or issued at any time from and after the 24th day of June 1775, shall be, and the same are hereby declared to be, absolutely void, and of no effect.

(a) By 17 G. III. c. 30. §. 1, made perpetual by 27 G. III. c. 16. ‘Whereas the said Act (meaning 15 G. III. c. 51.) hath been attended with very salutary effects, and in case the provisions therein contained were extended to a further sum (but yet without prejudice to the convenience arising to the public from the negotiation of Promissory Notes and inland Bills of Exchange for the remittance of Money in discharge of any balance of Account or other Debt), the good purposes of the said Act would be further advanced.’ Be it therefore enacted, that all Promissory or other Notes, Bills of Exchange or Draughts, or undertakings in writing, being negotiable or transferable, for the payment of twenty shillings, or any sum of money above that sum and less than five pounds, or on which twenty shillings or above that sum, and less than five pounds shall remain undischarged, and which shall be issued, within that part of Great Britain called England, at any time after the 1st day of January, 1778, shall specify the names and places of abode of the persons respectively to whom, or to whose order, the same shall be made payable, and shall bear date before or at the time of drawing or issuing thereof, and not on any day subsequent thereto, and shall be made payable within the space of twenty-one days next after the day of the date thereof; and shall not be transferable or negotiable after the time thereby limited for payment thereof; and that every indorsement to be made thereon shall be made before the expiration of that time, and bear date at, or not before the time of making thereof; and shall specify the name and place of abode of the person or persons to whom, or to whose order the money contained in every such Note, Bill, Draught, or Undertaking, is to be paid; and that the signing of every such Note, Bill, Draught, or Undertaking

These regulations were, that they specified the name and place of abode of the person to whom or to whose order they were made payable, that they should be attested by one subscribing witness, that they should bear date at or before the time when they were issued, and be made payable within 21 days after the date.

taking, and also of every such Indorsement, shall be attested by one subscribing witness at the least; and which said Notes, Bills of Exchange, or Draughts, or Undertakings in writing, may be made or drawn in words to the purport or effect as set out in the Schedule hereunto annexed, No. 1 and 2. And that all Promissory or other Notes, Bills of Exchange, or Draughts, or Undertakings in writing being negotiable or transferable, for the payment of twenty shillings, or any sum of money above that sum or less than five pounds; or in which twenty shillings, or above that sum, and less than five pounds shall remain undischarged, and which shall be issued within that part of Great Britain called England, at any time after the said 1st day of January 1778, in any other manner than as aforesaid; and also every Indorsement on any such Note, Bill, Draught, or Undertaking, to be negotiated under this Act other than as aforesaid, shall, and the same are hereby declared to be, absolutely void.

SCHEDULE,

No. 1.

(Place) (Day) (Month) (Year).

Twenty-one days after date, I promise to pay to A. B. of (place) or his order, the Sum of _____ for value received by

Witness, E. F. C. D.

And the Indorsement, toties quoties.

(Day) (Month) (Year)

Pay the Contents to G. H. of (place) or his order

Witness I. K. A. B.

No. 2.

(Place) (Day) (Month) (Year).

Twenty-one days after date, pay to A. B. of (place) or his order, the Sum of _____ value received as advised by

To E. F. of (place) C. D.

Witness G. H.

And the Indorsement, toties quoties.

(Day) (Month) (Year)

Pay the Contents to I. H. of (place) or his Order

Witness L. M. A. B.

But

But now all Notes payable to Bearer, which have been issued by the Governor and Company of the Bank of England, since the second day of March 1797, or which hereafter shall be issued by them, are (a) made good and valid in law, notwithstanding their being made and issued for the payment of less than £5. and the acts of the 15th and 17th Geo. III. so far as they relate either to the making void of promissory notes, or draughts or undertakings in writing payable on demand to the bearer thereof, for any sum of money less than £5. in the whole, or to the restraining the publishing or uttering and negotiating of any such notes, draughts or undertakings, are (b) suspended from the 2d of March 1797, to the 1st of May 1797.

A Bill

(a) By 37 Geo. III. c. 28. It is enacted, " That all Promissory Notes, and other notes for payment of money, which since the second day of March one thousand seven hundred and ninety-seven, have been, or which hereafter shall be issued by the Governor and Company of the Bank of England, payable to bearer, notwithstanding the same shall have been, or shall be, made and issued for the payment of any sum of money under the sum of five pounds, shall be good and valid in the law, to all intents and purposes, in like manner as if the same had been made and issued for the sum of five pounds, or upwards; and no person concerned, or who has acted in, or who shall or may be concerned or act in, the making, uttering, publishing, or negotiating, such notes, shall be subject or liable to any penalty or forfeiture whatsoever in respect thereof.

(b) By 37 Geo. III. c. 32. Whereas it is expedient that the said acts (15th and 17th Geo. III.) should be suspended for a certain time, so far as the same may relate to any notes, draughts, or undertakings, made payable on demand; be it therefore enacted, that the said acts, so far as the same relate to the making void of promissory notes, or draughts, or undertakings in writing, payable on demand to the bearer thereof, for any sum of money less than the sum of five pounds in the whole; and also to restrain the publishing or uttering and negotiating of any such notes, draughts, or undertakings as aforesaid, shall, from and after the second day of March one thousand

A Bill or Note must purport that the money mentioned in it shall be payable absolutely and at all events: if it purports to make the payment depend on any uncertainty or contingency, the instrument is not a Bill or Note.

Thus an order or promise to pay money provided (a) the terms mentioned in certain letters shall be complied with, provided (b) I. S. shall not be surrendered to prison within a limited time, provided (c) I. S. shall not pay the Money by a particular day, provided (d) I. S. shall leave me sufficient, or I shall

thousand seven hundred and ninety-seven, be, and the same are hereby declared to be, to all intents and purposes, suspended until the first day of May next.

(a) Kingston v. Long, B. R. M. 25 G. III. The Plaintiff brought an action as Indorsee against the Defendant as acceptor upon an order importing to be payable *provided the terms mentioned in certain letters written by the Drawer were complied with*, and the court held clearly that the Plaintiff could not recover, though the acceptance admitted a compliance with the terms, for the order was no bill, until after such compliance, and if it were not a bill when drawn, it could not afterwards become one.

(b) Smith v. Boheme, 3 Lord Raym. 67. cit. Lord Raym. 1362. 1396. Action by the Plaintiff as Payee of a note against the makers upon a promise to pay the Plaintiff or order on demand 71l. 12s. 10d. or surrender the body of Samuel Boheme to an action brought against him by Smith: Verdict for the Plaintiff and judgment; and on error brought in the King's Bench, the court held that this was not a Note within the Statute, because the money was not absolutely payable, but depended upon the contingency whether the Defendants should surrender Samuel Boheme to prison; and the judgment was reversed 9th of June, 1724.

(c) Appleby v. Biddulph. cit. 8 Mod. 363. 4 Vin. 240—pl. 16. An action was brought on this Note, "I promise to pay to T. M. 50l. if my Brother doth not pay it within six weeks;" and after verdict for the Plaintiff the Court arrested the judgment, because the maker was only to pay it on a contingency.

(d) Roberts v. Peake, Burr. 323. The Plaintiff as Indorsee of a Note sued one of the Makers; the instrument was in these words. "We promise to pay A. B. 116l. 11s. value received on the death of George Henshaw, provided he leaves either of us sufficient to pay the said sum, or if we shall be otherwise able to pay it;" and upon a case reserved, the court held

otherwise be able to pay it, or when I. S. (a) shall marry, is no Bill or Note on account of the contingency to which the payment is subjected. An order or promise to pay out of my (b) growing subsistence, or (c) fifth payment, when due, (d) or out

held it was not a negotiable Note, because it was payable eventually and conditionally only, and not absolutely and at all events, and a nonsuit was entered.

(a) *Beardsley v. Baldwin*, Str. 1151. A Note to pay money within so many days after the Defendant should marry, was (on consideration) held not to be a negotiable note; and in *Pearson v. Garrett*. Comb. 227. and 4 Mod. 242. (which was before the Statute;) an action having been brought upon a Note by which the Defendant promised to pay the Plaintiff sixty guineas if he (the Plaintiff) should be married within two months, the Court inclined against the Note, because it was to pay money on a mere contingency, and judgment was given on demurrer for the Defendant.

(b) *Jocelin v. Laferre*, Fort. 281. 10 Mod. 294. 316. Evans drew upon Jocelin, and required him to pay Laferre 7l. a month out of Evans's growing subsistence. Laferre sued Jocelin, and had judgment, but upon a writ of error that judgment was reversed, because this Draft was not a good Bill of Exchange, in as much as it would not have been payable, had Evans died, or had his subsistence been taken away.

(c) *Haydock v. Linch*, Lord Raym. 1563. Rogers drew upon Linch and requested him to pay Haydock 14l. 3s. out of the 5th payment when it should become due, and it should be allowed by Rogers. Linch accepted the Draught, and Haydock sued him, but the Court on demurrer to the declaration held this was no Bill of Exchange, and gave judgment for the Defendant.

(d) *Dawkes v. Lord Deloraine*, Blackst. 782. 3 Wils. 207. A Draught was in these words, "8th of January, 1768, Seven weeks after date pay Mrs. Dawkes, 39l. 17s. out of W. Steward's money as soon as you shall receive it, for your humble servant, Deloraine." To Timothy Brecknock, Esq." Brecknock accepted the Bill, but it not being paid, Mrs. Dawkes brought an action upon it against Lord Deloraine, who pleaded that Brecknock had not received W. Steward's money, and upon demurrer to his plea insisted that this was not a Bill of Exchange. The Court after argument, held the objection good; because it was payable out of a particular fund, and on an event which was future and contingent, viz. the receipt of W. Steward's money, whereas a Bill ought to be subject to no event or contingency, except the failure of the general personal credit of the persons drawing or negotiating it.

out of money when received, is no Bill or Note on account of the uncertainty whether the subsistence or payment will become due, or the money be received.

So an order to pay a sum out of (a) Rents or (b) other money in the hands of the person to whom it is addressed, is no bill, because it may be that he has not rent or other money in his hands sufficient to discharge it.

So an order from the (c) owner of a ship to the freighter to pay money *on account of freight* is no bill, because the quantum due for freight may be open to litigation, but such an order from the freighter (d) is, because it is an admission that so much at least is due.

it.—In *Wilson*, 262. is a report from hearsay of a determination that a promise to pay a sum of money, on the receipt of the Payee's wages due from a ship in Government service was a good Note; but that may perhaps be questioned, because the maker might never receive the wages.

(a) Lord Raym. 1362. Str. 592. Fort. 282.

(b) *Jenney v. Herle*, Lord Raym. 1361. 8 Mod. 265. Str. 591. Herle sued Jenney upon a Bill drawn by him upon Pratt, and payable to Herle to this effect "Sir, you are to pay Mr. Herle 1945l. out of the money in your hands belonging to the Proprietors of the Devonshire Mines, being part of the consideration money for the purchase of the manor of West Buckland." Herle had judgment in the Common Pleas, but upon a Writ of Error the Court of King's Bench held this was no Bill of Exchange, because it was only payable out of a particular fund supposed to be in Pratt's hands, and the judgment was accordingly reversed.

(c) *Banbury v. Liffett*. Str. 1211. Gibson drew on the Defendants in favour of the Plaintiff "on account of freight of the Galley Veale, Edward Champion, and this order shall be your sufficient discharge for the same." The action was brought against the Defendants as acceptors, and they contended it was not a Bill of Exchange, because it was only payable out of a particular fund; and Lee, C. J. was of that opinion, but he left the point to the Jury, who found for the Defendants on another ground.

(d) *Pierfon v. Dunlop*, Cowp. 571. M^lLintot freighted a ship of which Nichol was Captain and Pierfon owner, and being unable to pay the freight drew

And an order to pay money as (a) *the Drawer's quarter's half-pay by advance* before the pay will be due, is a good bill, because it will be payable though the half-pay shall never become due.

So an order or promise to pay money when (b) J. S. shall come of age, specifying the day when that event is to happen, is a good Bill or note, because it is payable though J. S. die in the interim.

And an order or promise (c) to pay within a limited time after a man's death is a good bill or note, because
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drew upon Dunlop and Co. in favour of Nichol *on account of freight*: Pierfon afterwards sued Dunlop and Co. as acceptors, and though other objections were taken, it was never insisted that this was payable out of a particular fund.

(a) *Macleod v. Snee*, Lord Raym. 1481. Stra. 762. 1 Barnard. 12. Macleod was sued in the Common Pleas as acceptor of a Bill of Exchange drawn by Dundas and indorsed to the Plaintiff, dated 25th of May 1724, by which Dundas required him one month after date "to pay 9l. 10s. as his (Dundas's) quarter's half pay from the 24th June 1724, to 25th September following, by advance," and obtained judgment. Macleod brought a Writ of Error, and insisted that this was similar to the cases of *Jocelin v. Laferre* and *Jenney v. Herle*, but the whole court was of a contrary opinion; for per cur. this Bill was not payable upon a contingency, nor out of a particular fund, but is made payable at all events, and drawn upon the general credit of the drawer, and not out of the half pay, for it is payable as soon as the quarter begins, and the half pay was not to be due till three months afterwards.

(b) *Gofs v. Nelson*, Burr. 226. Action on a Note payable to an infant "when he (the infant) shall come of age, to wit, 12th June 1750;" and it was objected in arrest of judgment that it was uncertain whether the money would ever have been payable, because the infant might have died under 21, but the court held it a good Note, because it was payable at all events on the 12th June 1750, though the infant should have died before that time.

(c) *Cooke v. Colehan*, Str. 1217. On error from the Common Pleas, the Court held a Note payable six weeks after the death of the Defendant's
C 2 father,

it must become payable at some time or other, though the exact period is uncertain

So an order or (a) promise to pay within a limited time after the payment of money due from government is a good bill or note, because it is morally certain that such payment will be made.

A Bill or Note payable to J. S. or order, is payable to order. A Bill or Note payable to J. S. or bearer, is (b) payable to the bearer; and in the latter case J. S. is a mere cypher.

It was for some time unsettled whether it was not essential that a bill or note should be payable either to order, or to (c) bearer, but it is now decided that it is not.

father, a good negotiable Note, because there was no contingency, whereby it might never become payable, but it was only uncertain as to the time, which is the case with all bills payable so many days after sight.

(a) *Andrews v. Franklin*. Str. 24. A Note payable two months after a certain ship should be paid off, was objected to, as depending upon a contingency which might never happen; but per cur. the paying off the ship is a thing of a public nature, and this is negotiable as a promissory Note; Judgment for the Plaintiff. And in *Evans v. Underwood*, 1 Wills. 262. Where an action was brought by an Indorsee against the maker upon a Note payable on the receipt of the Payee's wages from his majesty's ship the Suffolk, the Court thought the case like that of *Andrews v. Franklin*, and after looking into that case *are said* to have given judgment for the Plaintiff. Quære tamen, because it was uncertain though the wages might be paid, whether the maker would receive them.

(b) *Grant v. Vaughan*, Burr. 1516. Vaughan gave Bicknell a draught upon his banker payable "to ship Fortune or bearer." The draught came to the hands of Grant, who sued Vaughan upon it. The Defendant contended that this draught was a mere authority to receive the money, and not negotiable, and that point and another being left to the Jury they found for the Defendant; but upon an application for a new trial and cause shewn, the court held clearly that it was negotiable, and a new trial was granted, in which the Plaintiff recovered.

(c) *Smith v. Kendall*, 6 Term Rep. 123. In an action for money paid and lent, the Defendant pleaded the statute of limitations, and the Plaintiff replied

It was also for some time a matter of controversy, whether it was not necessary that a Bill or Note should import to have been made for value received; but that (a) is now also settled in the negative.

The (b) name of the person making it must be inserted in the body, or subscribed at the bottom of every

replied a latitat sued out 26th September, 1793. A Note was given in evidence dated 25th June 1787, and payable to the Plaintiff three months after date, but it was not payable either to order or to bearer, and the Court on consideration held that it was a good note within the statute, that it was intitled to three days grace, and consequently that the statute of limitations did not begin to run until those three days had expired, which was on 28th September 1787, and therefore within six years of 26th September 1793. See also *Chadwick v. Allen*, ante p. 3, note (b) The old entries also describe the custom upon bills to be to pay to the Payee without adding any words to make them payable to order or to bearer. *Lutw.* 231. 277. 891. *Vid.* 17. *Brownl. Red.* 77. *Clift.* 916. and see *Lord Raym.* 1545.

(a) *White v. Ledwick*, B. R. H. 25 G. III. A declaration upon a bill of exchange was demurred to, because it was not stated to have been given for value received, but the court said, it was a settled point, that it was not necessary, and gave judgment for the Plaintiff. The same point is ruled in *Macleod v. Snee*. *Lord Raym.* 1481. See also *Fort.* 282. 8 *Mod.* 267. 1 *Barnard.* 88. *Lutw.* 889. 1 *Mod. Ent.* 310. 1 *Show.* 497.

(b) *Taylor v. Dobbins*, Str. 399. The Declaration upon a Note stated that the Defendant wrote it with his own hand, but did not allege that he signed it, and an exception was taken on that ground. *Sed per cur.* If the Defendant wrote it, his subscription to it was unnecessary, it is sufficient if his name appeared in any part. "I, J. S. promise to pay" is as good as I promise to pay, subscribed J. S.

Elliott v. Cowper, Str. 609. *Lord Raym.* 1376. 8 *Mod.* 307. It was objected on demurrer to a declaration on a Note, that it alledged only that the Defendant made it, but did not state that he signed it; but by the court, if he did not either write or sign it, he did not make it, for making implies signing, and making is alledged. Judgment for Plaintiff.

Smith v. Jarves, *Lord Raym.* 1484. The declaration upon a Note drawn by Jarves and Bailly stated that Jarves for himself and Partner made his Note in writing with his own hand subscribed, whereby he promised for himself and partner to pay. It was objected on demurrer, that it was not charged, that Jarves had signed the Note for himself and Bailly, but the

court

every bill or note, and every bill or note must be written or signed by the person making it, or some one authorized by him for that purpose.

If a person signs his name upon a blank paper, stamped with a bill stamp, and delivers it to another person to draw such bill as he may choose thereon, he (*a*) is the drawer of any bill to which the stamp is applicable which such person shall draw thereon.

Bills are either Inland or Foreign: inland when made and payable within this kingdom, and foreign, when made or payable abroad.

Inland Bills and Notes seldom consist of more than one part: Foreign Bills in general consist of several.

The several parts of a Bill are called a Set.

Each part contains a condition that it shall be payable only so long as all the others remain unpaid: in other respects all are of the same tenor.

the court held the statement shewed that Jarves did sign for himself and Bailly, and gave the Plaintiff judgment.

Ereskine v. Murray, Lord Raym. 1542. In an action on a Bill it was alleged that the Plaintiff made his bill in writing, and thereby requested the Defendant to pay. It was objected on error, that it did not appear that the Plaintiff signed the bill; but it was answered, that the allegation that he made it, and required the Defendant to pay, implied that his name was in it (otherwise he could not request,) and that he or somebody for him wrote it. Judgment for the Plaintiff was affirmed.

(*a*) *Collis v. Emett*, 1 H. Bl. 313. Emett signed his name upon a blank paper stamped with a shilling bill stamp (the highest stamp then in force for bills) and delivered it to Livefay and Co. that they might draw thereon such bill as they should please. They drew one for 1551l. at three months date, which was duly transferred to Collis and Co. and Collis & Co. sued Emett thereon. A special verdict was found, principally with a view to another point, and the court held Emett answerable, and the Plaintiffs had judgment.

This

This condition should be inserted in each part, and should in each mention every other part of the set, for if a man with an intention to make a set of three parts should omit the condition in the first, and make the second with a condition mentioning the first only, and in the third alone take notice of the other two (which, by the way, is the mode pointed out by (a) Molloy, (b) Malynes, and (c) Marius) he might perhaps in some cases be obliged to pay each; for it would be no defence to an action on the second that he had paid the third, nor to an action on the first that he had paid either of the others.

But an omission is not, perhaps, material, which upon the face of the condition must necessarily have arisen from a mistake, as if in the enumeration of the several parts one of the intermediate ones were to be omitted, for instance, "Pay this my first of Exchange, second and *fourth* not paid."

Where a bill consists of several parts, each ought to be delivered to the person in whose favour it is made (unless one is forwarded to the Drawee for acceptance, and in that case the rest must be so delivered) otherwise there may be difficulties in negotiating the Bill, or obtaining payment.

If a bill or note made (d) within this kingdom be written on paper, parchment, or vellum, such paper, &c.

(a) Book 2. c. 10. §. 14.

(b) Book 3. c. 5. p. 261, 262.

(c) P. 7.

(d) The 31st. G. III. c. 25. § 2. imposes the stamp duty on the paper, &c. on which any bill of Exchange shall be written, but from the conclusion of the section

&c. must, except in a few instances, be stamped before (a) the bill or note is written; otherwise the (b) party writing, signing, accepting, or paying it, or

section which directs that the duty shall be paid by the person making such bills, from the 10th section, which imposes a penalty upon any person writing or signing a bill on unstamped paper, and from the 19th section, which provides that the paper &c. shall be stamped before the writing of the bill, and prohibits the stamping it afterwards, it is sufficiently clear the legislature did not mean to extend it to bills drawn abroad.

(a) By 31st G. III. c. 25. § 19. It is enacted, that all vellum, parchment, and paper liable to any stamp duty by that act, shall, before any of the matters or things thereby charged shall be ingrossed, printed, or written thereupon, be brought to the head office of stamping vellum, parchment, or paper; and the Commissioners by themselves, or by their officers employed under them, shall and may, from time to time, stamp and mark, any quantities or parcels of vellum, parchment, or paper, before any of the matters or things thereby charged shall be engrossed, printed, or written thereupon, upon payment of the several duties payable for the same by virtue of this act. And no bill of exchange, promissory note, or other note, draught, or order, liable to the duties by this act imposed, or any of them, shall be pleaded or given in evidence in any Court, or admitted in any Court to be good, useful, or available in Law or Equity, unless the vellum, parchment, or paper, on which such bill of exchange, promissory note, or other note, draught, or order, receipt, discharge, acquittance, note, memorandum, or writing shall be ingrossed, printed, written, or made, shall be stamped or marked with a lawful stamp or mark, to denote the rate or duty as by that act is directed, or some higher rate or duty in that act contained; and it shall not be lawful for the said Commissioners, or their officers, to stamp or mark any vellum, parchment, or paper, with any stamp or mark directed to be used or provided by virtue of that act, at any time after any bill of exchange, promissory note, or other note, draught, or order, shall be ingrossed, written, or printed thereon, under any pretence whatever.

(b) By 31st G. III. c. 25. § 10. It is enacted, That all and every person or persons, who from and after the said 1st day of August 1791, shall write or sign, or cause to be written or signed, or who shall accept or pay, or cause to be accepted or paid, any bill of Exchange, Promissory Note, or other Note, Draught, or Order, liable to any of the duties by that Act imposed, without the same being first duly stamped or marked with a proper stamp or mark in the manner therein prescribed, or upon which there shall not be some stamp or mark resembling the same, shall for every such offence forfeit and pay the sum of twenty pounds.

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causing it to be accepted or paid, will be liable to a penalty of twenty pounds, and the bill or note will not be available in law or equity.

Bills and notes need not be stamped, which (a) are issued by the Bank of England, or for the payment of less than forty shillings or (b) (in case of bills) which bear date before or on the day when they are issued, and at the place from whence they are drawn and issued, and are drawn upon a banker, or person acting as such, and residing or transacting the business of a banker within ten miles of the place where they are actually drawn and issued, and payable to the bearer on demand.

On (c) other bills and notes, the proper stamp for such

(a) By 31 G. III. c. 25. § 5. It is enacted that all notes and bills whatever, which shall be issued by or on account of the Governor and Company of the Bank of England, shall be freed and exempted from all and every the stamp duties therein imposed, upon the terms and conditions that the said Governor and Company of the Bank of England shall pay into the receipt of his Majesty's Exchequer at Westminster, the full annual sum of 12000*l*. by equal half yearly payments, to be made on or before the 10th day of October, and the 5th day of April in every year, the first payment thereof to be made on or before the 10th day of October, 1791.

(b) By 31 G. III. c. 25. § 4. It is enacted that nothing in that act contained shall extend, or be construed to extend, to charge any draught, or order for the payment of money to the bearer on demand, bearing date on or before the day on which the same shall be issued, and at the place from which the same shall be drawn and issued, and drawn upon any Banker or Bankers, or person or persons acting as a Banker or Bankers, and residing and transacting the business of a Banker or Bankers within ten miles of the place where such draught or order shall be actually drawn and issued.

(c) By 31 G. III. c. 25. § 2. It is enacted, that from and after the 1st day of August, 1791, there shall be raised, levied, collected, and paid, throughout the kingdom of Great Britain, the several new rates and duties following; that is to say,

For every piece of vellum or parchment, or sheet or piece of paper, upon which any bill of exchange, draught, or order for the payment of money on

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demand

such bills as are for the payment on (a) demand of any sum amounting to 40s. and not exceeding 5l. 5s.

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demand, shall be ingrossed, written, or printed, where the sum expressed therein, or made payable thereby, shall amount to 40s. and shall not exceed 5l. 5s. there shall be charged a stamp duty of 3d. and where such sum shall exceed 5l. 5s. and shall not exceed 30l. a stamp duty of 6d. and where such sum shall exceed 30l. and shall not exceed 50l. a stamp duty of 9d. and where such sum shall exceed 50l. and shall not exceed 100l. a stamp duty of 1s. and where such sum shall exceed 100l. and shall not exceed 200l. a stamp duty of 1s. 6d.

For every piece of vellum, or parchment, or sheet or piece of paper, upon which any Promissory note, or other note for the payment of money to the bearer on demand, which may be re-issuable from time to time after payment at the place where the same was first issued, in the manner therein after directed, (See sect. 7) but not otherwise, shall be ingrossed, written, or printed, where the sum expressed therein, or made payable thereby, shall amount to 40s. and shall not exceed 5l. 5s. there shall be charged a stamp duty of 3d. and where such sum shall exceed 5l. 5s. and shall not exceed 30l. a stamp duty of 6d. and where such sum shall exceed 30l. and shall not exceed 50l. a stamp duty of 9d. and where such sum shall exceed 50l. and shall not exceed 100l. a stamp duty of 1s. and where such sum shall exceed 100l. and shall not exceed 200l. a stamp duty of 1s. 6d.

For every piece of vellum or parchment, or sheet or piece of paper, upon which any Promissory note, or other note for the payment of money to the bearer on demand, which may be re-issued from time to time after any payment at the same place, or at any other place than where the same was first issued in the manner therein after directed, (See sect. 8) shall be ingrossed, written or printed, where the sum expressed therein or made payable thereby shall amount to 40s. and shall not exceed 5l. 5s. there shall be charged a stamp duty of 6d. and where such sum shall exceed 5l. 5s. and shall not exceed 30l. a stamp duty of 1s.

For every piece of vellum or parchment, or sheet or piece of paper, upon which any bill of exchange, draught, or order, payable otherwise than on demand, or any promissory note, or other note payable otherwise than to the bearer on demand, shall be ingrossed, written, or printed, where the sum expressed therein, or made payable thereby, shall amount to 40s. and shall not exceed 30l. there shall be charged a stamp duty of 6d. and where such sum shall exceed 30l. and shall not exceed 50l. a stamp duty of 9d. and where such sum shall exceed 50l. and shall not exceed 100l. a stamp duty of 1s. and where such sum shall exceed 100l. and shall not exceed 200l. a stamp duty of 1s. 6d.

For

is a three-penny one, of any sum exceeding 5l. 5s. and not exceeding 30l. a sixpenny one, of any sum exceeding 30l. and not exceeding 50l. a ninepenny one, of any sum exceeding 50l. and not exceeding 100l. a shilling one, and of any sum exceeding 100l. and not exceeding 200l. an eighteenpenny one, and the same stamps are applicable to such notes as are payable to *the bearer* on demand, and are re-issuable after payment provided such payment is made by the person or persons who made or signed, and first issued or negotiated the same, and at the place where they were first issued or negotiated, on (a) notes payable to the bearer on demand which may be re-issued after payment by any person or at any place, the proper stamp if the sum expressed therein or payable thereby amounts to 40s. and does not exceed 5l. 5s. is a sixpenny one, and if the sum exceeds 5l. 5s. and does not exceed 30l. a shilling one, on bills payable otherwise than on demand, or on notes payable otherwise than to the bearer on demand, the proper stamp where the sum amounts to 40s. and does not exceed 30l. is a sixpenny one, where the sum exceeds 30l. and does not exceed 50l. a ninepenny one, where the sum exceeds 50l. and does not exceed 100l. a

For every piece of vellum or parchment, or sheet or piece of paper, upon which any bill of exchange, promissory note, or other note, draught, or order payable on demand, or otherwise, shall be ingrossed, written, or printed, where the sum expressed therein, or made payable thereby, shall exceed 200l. there shall be charged a stamp duty of 2s. all which rates and duties shall be payable and paid by the person or persons respectively making or signing such bills of exchange, promissory notes, or other notes, draughts, or orders.

(a) Vide post, p. 23.

shilling

shilling one, where the sum exceeds 100*l.* and does not exceed 200*l.* an eighteenpenny one, and upon all bills or notes payable on demand or otherwise, where the sum exceeds 200*l.* a two shilling one, except (*a*) that upon Foreign bills drawn in setts, the proper stamp for such as are for the payment of a sum not exceeding 100*l.* is a sixpenny one, of a sum exceeding 100*l.* and not exceeding 200*l.* is a ninepenny one, and of a sum exceeding 200*l.* is a shilling one, but then each bill of the sett is to be charged with the like duty.

So as the paper &c. is stamped with a stamp prescribed by 31 G. III. c. 25. it (*b*) is no objection that it denotes a higher rate or duty than the bill or note written upon it requires; but it must have one of the stamps prescribed by 31 Geo. III. c. 25, a (*c*) stamp under any other act of parliament, though of the same or a greater value will not be sufficient.

The paper, &c. on which a bill or note is written, (though it might formerly have been stamped at any time on paying a penalty) ought not *now* to (*d*) be

(*a*) By 31 G. III. c. 25. §. 3. It is enacted, that nothing therein contained shall extend to charge any foreign bills of exchange which shall be drawn in setts, according to the custom of merchants, with any higher rate of duty than the rate following, that is to say, where the sum expressed in such bills, or made payable thereby, shall not exceed £100. there shall be charged a stamp duty of 6*d.* and where such sum shall exceed £100. and shall not exceed £200. a stamp duty of 9*d.* and where such sum shall exceed £200. a stamp duty of 1*s.* provided that every bill of each sett of such bills so drawn shall be charged, and every such bill is thereby declared to be chargeable with the like duty, according to the rate abovementioned.

(*b*) Vide 31 G. III. c. 25. §. 19. ante. p. 15.

(*c*) *Manning v. Livie*, before Lord Kenyon, Sittings after Michaelmas Term 1796. In an action on a note by an Indorsee, the stamp appeared to be a seven shilling deed stamp; and Lord Kenyon said the note could not be read, and the Plaintiff was accordingly non-suited.

(*d*) Vide 31 G. III. c. 25. §. 19. ante, p. 15.

stamped after it is issued, but if it is, the (a) court will allow no evidence to prove *when* it was stamped, at least against a person who might not know but that it was stamped when it was issued.

In the case however of Bills or Notes made on or before the first of January 1794, which were not stamped, or were stamped with a stamp below the value the commissioners (b) were authorised to stamp them before the 1st of January 1795, on proof that the person producing them was the holder on the 1st of January 1794, and received them on a precedent valuable consideration without fraud or collusion, and took them without the proper stamp through fraud or imposition, without any fraudulent intention to evade the payment of the stamp duties.

Notes payable to the bearer on demand for any sum not exceeding £200. (c) and stamped with a three-

(a) *Wright v. Riley*, Peake 173. In an action by the Indorsee of a bill dated 9th September 1791, the bill when produced appeared to be properly stamped, but the Defendant proved that it was not stamped until some time after it was drawn; Lord Kenyon, however held, "That though the commissioners might have exceeded their authority in stamping it against the positive directions of the act, it became a valid instrument when stamped, and a judge *at nisi prius* could not inquire how, and at what time it was stamped; that great inconvenience might arise, and a great check might be put upon paper credit, if the objection were allowed, because it would be impossible for a man taking a bill in the ordinary course of business to know whether it was stamped before it was made. The Plaintiff had a Verdict.

(b) Vide 34 Geo. III. c. 32.

(c) By 31 Geo. III. c. 25 §. 7. It is enacted, that in all cases where any promissory note, or other note for the payment of money to the bearer on demand, which shall contain any sum not exceeding £5. 5s. and shall be marked or stamped with a mark or stamp to denote the rate or duty of three-pence thereby imposed, and also where any such note which shall contain any sum exceeding £5. 5s. and not exceeding £30. and shall be marked or stamped

three-penny, six penny, &c. stamp, may be re-issued after payment without a new stamp, provided the payment is made by the person or persons who made or signed and first issued or negotiated them at the place they were first issued or negotiated, but if they

stamped with a mark or stamp to denote the rate or duty of 6d. thereby imposed, and also where any such notes which shall respectively contain any sums exceeding £30. and not exceeding £200. and shall be marked or stamped with any the respective marks or stamps to denote the rates and duties respectively thereby imposed on the same, shall, at any time or times, from and after the *said* 1st day of August 1791, be paid by the person or persons by whom the same shall have been made or signed, and first issued or negotiated, and at the place where the same were first issued or negotiated, it shall and may be lawful for the person or persons so paying the same, notwithstanding such payment thereof, at any time afterwards, and so from time to time, so often as there shall be occasion after every such payment thereof, but not otherwise, again to issue, utter, or negotiate such promissory notes, or other notes, so respectively stamped as aforesaid, in such and the like manner as the same were respectively first issued or negotiated; and every such note so stamped as aforesaid, shall be, and is hereby declared to be, after any such payment thereof, but not otherwise, to be again issuable and negotiable, from time to time as aforesaid, in such and the like manner, and to such and the like uses, intents and purposes, as and for which the same were first issued or negotiated; and every such note so stamped as last aforesaid, which, at any time or times, from and after the said 1st day of August 1791, shall be paid by any person or persons, other than the person or persons making or signing the same, or at any place other than the place of issuing the same, in pursuance of any direction, nomination, or appointment for the payment thereof, contained or expressed in or upon such note, shall be taken and construed to be thereupon wholly discharged, vacated, and satisfied, and shall be no longer negotiable or transferable to any intent or purpose whatever, but shall be forthwith cancelled; and if any person or persons shall again issue, utter, or negotiate, or cause to be again issued, uttered, or negotiated, any such promissory or other note, after any payment thereof by any person or persons other than the person or persons making or signing the same, or at any place other than the place of issuing the same, in manner last mentioned; or if any person or persons named or described in such note for the payment thereof, shall, after such payment thereof in manner last mentioned, neglect or refuse to cancel the same, or cause the same to be cancelled, every such person or persons so offending, shall, for every such offence, forfeit the sum of £20. and if any such note so stamped as last aforesaid shall not be cancelled, as is herein before directed, but shall
be

are issued after payment by any other person or at any other place, the person issuing one is liable to a penalty of £20. and the duty first charged thereon, and notes payable to the bearer on demand for any sum not exceeding £30. (a) may be re-issued after payment without a new stamp, by whomsoever or wheresoever they may have been paid, so as such as are for the payment of a sum not exceeding £5. 5s. are stamped with a six-penny stamp, and such as are for the payment of a sum exceeding £5. 5s. and not exceeding £30. with a shilling one.

A Bill

be again issued, uttered, or negotiated, contrary to this act, then, and in every such case, and from time to time, as often as such note shall be again issued, uttered, or negotiated, there shall be due, answered, and paid to his Majesty, his heirs and successors, the like rate or duty which shall appear to have been charged thereon before the first issuing the same, or which is by this act chargeable thereon as aforesaid; and which rate or duty shall be payable by and charged on all and every person or persons severally and respectively who shall again issue, utter, or negotiate any such note or notes, or shall cause or procure any such note or notes to be again issued, uttered, or negotiated contrary to this act, his, her, and their respective executors, administrators, and assigns.

(a) By 31 Geo. III. c. 25, §. 8. It is enacted, that all promissory notes, or other notes for the payment of money to the bearer on demand respectively, not exceeding the several sums of £5. 5s. or £30. which shall be respectively stamped with the duties of 6d. or of 1s. thereby imposed, shall be, and are thereby declared to be re-issuable, and may be again issued and negotiated, by the person or persons making or signing the same, to such and the like uses, intents, and purposes, as and for which the same respectively were first issued or negotiated, notwithstanding such notes shall have been presented to, and paid by the person or persons making or signing the same, or shall have been presented to, or paid by any other person or persons in pursuance of any such direction, nomination, or appointment as aforesaid, for the payment thereof, or otherwise howsoever, and so from time to time as often as occasion shall require, notwithstanding any payment or payments thereof.

A Bill (*b*) payable at sight is not to be considered as a bill payable on demand.

If a Bill or Note is altered (though by consent of all parties) after it has once issued, or after the time when it was originally payable it (*a*) requires a new stamp.

No Bill or Note can properly be made or indorsed by, nor can a bill be properly addressed to any person incapable of making himself responsible for the payment.

(*b*) *J. Anson, v. Thomas*, B. R. T. 24 Geo. III. In an action on an Inland Bill, the question was, whether it was included under an exception in the stamp act of 23 Geo. III. c. 49 §. 4. in favour of bills payable *on demand*; and the court held it was not, and Buller J. mentioned a case before Willes, C. J. in London, in which a jury of merchants was of opinion that the usual days of grace were to be allowed on bills payable at sight.

(*a*) *Wilson v. Justice*, Before Lord Kenyon, Sittings after Michaelmas Term 1796. A Bill payable originally nine months after date, was, by consent of all parties, a fortnight after it had been in the hands of the Payee, made payable 12 months after date; and Lord Kenyon held that the alteration made a new stamp necessary, and nonsuited the Plaintiff.

Bowman v. Nicoll, 5 Term Rep. 537. A Bill was dated 2d Sept. and payable 21 days after date: while it was in the hands of the drawer, it was altered with the consent of the acceptor to 51 days: on the 30th of September it was again altered to 21 days, but the date was brought forward to the 14th of September, after which it was negotiated, and an action brought upon it against the acceptor; Lord Kenyon said, that every alteration in an instrument requiring a stamp made a new stamp necessary, and nonsuited the Plaintiff; upon a rule nisi for a new trial, it was urged that there was a distinction between an alteration made *after* the negotiation of a bill, and an alteration made *before*, and that in the latter case the whole might be considered as one transaction; but the court said, that as the operation of the bill as it originally stood was quite spent when the last alteration was made, that alteration made it a new and distinct transaction between the parties, and therefore that there should have been a new stamp; and the nonsuit was confirmed.

An (*a*) infant cannot make himself responsible for the payment unless it is given for necessaries; nor except in those instances in which she is considered as having an existence independent of her husband, a feme covert.

A Feme Covert resident in this kingdom is considered as having an existence independent of her husband, where the (*b*) husband is under a civil incapacity of being here, and there are (*c*) cases in which it has been decided, that she is to be considered as having an independent existence where she lives apart from her husband, and has a separate main-

(*a*) *Williams v. Harrison*, Carth. 160. 3 Salk. 197. In an action against the drawer of a bill the Defendant pleaded infancy and the Plaintiff demurred, and the court held clearly without argument, that infancy was a good bar, for the bill was drawn by the Defendant as a trader in course of trade, and not for necessaries.

Trueman v. Hurst, 1 Term Rep. 40. An action was brought on a note given for board and lodging, and for teaching the Defendant hair-dressing, and upon an account stated, the Defendant pleaded infancy, and the Plaintiff replied for necessaries: Defendant demurred and insisted that an infant could not bind himself by a note, even for necessaries, and that no action would lie against him on an account stated; the court desired the Plaintiff's counsel to confine himself to the last point, from whence it may be inferred that they thought the first was with him, but they decided against him upon the last.

(*b*) Vide *Derry v. Duchefs of Mazarine*, Lord Raym. 147. Salk. 116. *Sparrow v. Carruthers* cited Blackst. 1197. 1 Term Reports, 6. see also Blackst. 1081, 1082. 1 Term Rep. 9.

(*c*) Vide *Ringstead v. Lady Laneshorough*, B. R. H. 23 Geo. III. cited 1 Term Rep. 6. *Barwell v. Brookes*, B. R. H. 24 Geo. III. cited 1 Term Rep. 6. *Corbett v. Poelnitz*, 1 Term Rep. 5. *Todd v. Stoakes*, Salk. 116. *Compton v. Collinson*, 1 H. Bl. 334. *Gilchrist v. Brown*, 4 Term Rep. 766. *Ellah v. Leigh*, 5 Term Rep. 679. *Clayton v. Adams*, 6 Term Rep. 605.

tenance, but (a) the authority of those cases has been questioned.

A Feme Covert is (b) not to be considered as having an existence independent of her husband, though she is, by particular custom, permitted to trade on her separate account.

It has been held too, that (c) no person, except an actual Merchant could draw a bill: but the contrary is (d) now fully settled.

A bill (e) may be addressed to the drawer, but in legal operation it is rather a note than a bill.

A bill or note cannot be made payable to any person who is incapable of suing for its payment.

A Feme Covert cannot sue for the payment of a bill or note: an Infant can.

(a) Vide 5 Term Rep. 682. 1 H. Blackst. 350. 6 Term. Rep. 605.

(b) Vide Blackst. 1081. Caudell v. Shaw, 4 Term Rep. 361. but see also Lacie v. Phillips. Burr. 1776

(c) Fairley v. Rock, Lutw. 891. Bromwich v. Lloyd Lutw. 1585.

(d) Vide Sarsfield v. Witherley, Carth. 282. 2 Vent. 292. Comb. 152. 1 Show. 125, 12 Mod. 36. 380. Salk. 125.

(e) Starke v. Cheefeman, Tr. 11 W. III. Carth. 509. Christopher Cheefeman being in Virginia, drew upon Christopher Cheefeman in Ratcliffe, which in truth was himself; and an action being brought against him upon the bill, he suffered judgment by default, without taking any objection on this ground, though he did upon others, and the Plaintiff had judgment.

Dehers v. Harriot, Tr. 2 W. and M. 1 Show. 163. A. drew a bill payable by himself in Dublin; an action was afterwards brought thereon, and the Plaintiff recovered.

Robinson v. Bland, Burr. 1077. The Defendant being at Paris drew a bill for £672. on himself in London; the consideration was partly money lost at play in Paris, and partly money lent at the time and place of play, and upon that ground a case was reserved for the opinion of the court; but no objection was made that the Defendant drew the bill upon himself.

Joselyn v. Laferre, Fort. 282. A man may draw a bill upon himself. See also Mar. 3.

A bill may (a) be made payable to the drawer.

If a bill or note imports to be payable to a person not in esse, or his order, and is issued with an indorsement in blank, purporting to be made by him thereon, it is as against the drawer or maker to be considered as a bill or note (b) payable to bearer; and

(a) *R. Butler v. Cripps*, Salk. 130.

v. Ormston, 10 Mod. 286.

(b) This point has been repeatedly discussed within a few years upon several bills drawn in 1788. A case of the kind had occurred at the London Sittings after Easter Term 1769. *Stone v. Freeland*, cited 1 H. Bl. 316, in the notes, a bill drawn by Cox on the Defendant, was made payable to Butler and Co. or their order, and indorsed in their name, and instead of proving that this indorsement was made by Butler and Co. the Plaintiff's own witnesses said, they believed it was made by Cox, and though there was a house under the firm of Butler and Co. with which Cox had dealings, it was proved that the bill had never been in their hands, upon which it was contended that the indorsement being fictitious, the Plaintiff could not recover; but by Lord Mansfield, "the intent of the bill was only to enable Cox to raise money, and the reason why it was not made payable to his order was, that there would then have been too many payable to his order in circulation at the same time, which would have had the appearance of fictitious credit; names are often used of persons who never existed;" and it appearing that the Defendant promised to pay the bill at the time the Plaintiff discounted it, the Jury upon the footing of that undertaking found a verdict for the Plaintiff. As this case however was distinguishable from those on the bills drawn in 1788, on account of the express undertaking to pay the Plaintiff, which (as was admitted by Mr. J. Ashurst, who held a brief in the cause in 3 Term Rep. 176.) was the ground of the determination, as this was a *nisi prius* decision only, and as the amount of the bills in 1788 was very considerable, the point was very strongly contested in the actions on those bills. The first case that came before the court was *Tatlock v. Harris*, 3 Term Rep. 174. It was an action brought upon a bill drawn by the Defendant, as one of several partners in a house at Nottingham upon himself in London, payable to Grigson and Co. or order, and purporting to be indorsed by Grigson and Co. and Lewis and Potter; the Defendant was sued upon the bill, and the declaration contained counts upon the bill, and counts for money paid and money had and received. It appeared in evidence that there was no such house as that of Grigson and Co. that the Defendant paid the bill to Lewis and Potter, to whom he was

and so is the bill as against the acceptor, if he knew at the time of his acceptance, that the payee was a fictitious person.

If

indebted, and they gave him credit in account, and that the Plaintiffs discounted it for Lewis and Potter; to this evidence the Defendant demurred, and after argument and time taken to consider, the court intimated a strong opinion that the Plaintiffs might recover on the counts upon the bill, but the ground of their decision was, that he was intitled to recover on the counts for money paid, and money had and received, because the giving the bill was an appropriation of so much money to be paid to the person who should become holder of the bill, and therefore when the Plaintiffs discounted it, they paid the money to the use of the Defendant, and when Lewis and Potter gave the Defendant credit for the value of the Bill, that was money had and received to the use of such persons as should afterwards be the holders of the bill.

The next case was that of Vere v. Lewis, 3 Term Rep. 182. which was brought against the Defendant as acceptor, and the only difference between that and Tatlock v. Harris was, that there was no Evidence to shew that the Defendant had received any value for the bill, and that there was strong evidence to shew that the indorsement in the name of the Payee was made by the Defendant, but the court held that the latter circumstance did not vary the question, and that the acceptance was evidence that the Defendant had received value from the drawers, and therefore they gave judgment for the Plaintiffs without argument. Lord Kenyon, Mr. J. Ashurst, and Mr. J. Buller, thought also that he was intitled to recover on one of the counts of the declaration, which stated the bill to be payable to bearer.

This case was followed by that of Minet v. Gibson, 3 Term Rep. 481. 1 H. Bl. 569, where a bill drawn by Livesay and Co. on the Defendants was made payable to John White, or order, and it was found upon a special verdict, that White was a fictitious person, that his name was indorsed upon the bill by Livesay and Co. that the Defendants knew when they accepted the Bill that no such person as John White, whose indorsement was then upon the bill, existed, and that the indorsement was not made by any person of that name, the court of King's Bench thought this case decided by Vere and Lewis, and gave judgment for the Plaintiffs, and on a question from the House of Lords, whether the bill might not be deemed in law to be payable to the bearer, Hotham, Perryn, and Thompson, Barons, and Gould J. gave it as their opinions that it might; but, Eyre, C. B. and Heath J. differed; after which Lord Kenyon, Lord Loughborough, and Lord Bathurst spoke in favour of the judgment, and Lord Thurlow against it, and the judgment was affirmed without a division.

After

If a note is signed by several persons, but begins, *I promise, &c.* (a) it is several as well as joint.

The act of drawing a bill implies an undertaking for the drawer to the payee, and every other person to whom the bill may afterwards be transferred, That the drawer is a person capable of making himself responsible for its payment, that he shall, if applied to for the purpose, express in writing upon the bill, an undertaking to pay it when it shall become payable, and that he shall then pay it, and subjects him on a failure in any of these particulars to an action at the suit of the payee or holder.

The making of a note is an express engagement to the payee, or person to whom it shall be transferred, to pay the money mentioned therein, according to its tenor.

After the judgment in *Minet v. Gibson* in the King's Bench, and before its determination in the House of Lords, came on the case of *Collis v. Emmett*, 1 H. Bl. 313. where *Livesay and Co.* who were authorized by the Defendant to draw for him by his writing his name on a piece of blank paper with a shilling bill stamp thereon, made a bill payable to *George Chapman*, or order, and indorsed it with *George Chapman's* name, and it appearing that there was no such person as *George Chapman*, the court of Common Pleas after two arguments and time taken to consider, held that the action might fairly be supported on a count that stated the bill to be payable to bearer, and there being such a count in the declaration, they gave the Plaintiffs judgment upon it.

(b) *March v. Ward, Peake*, 130. A note signed by *Bowling and Ward*, began "I promise to pay," and in an action against *Ward* alone it was objected that the note was *joint only*, and not several, but Lord Kenyon held it was several as well as joint, and said it had been so decided on a case from *Chester*. "*I* applies to each severally." Verdict for the Plaintiff.—*Vide post. cap. 5.*

C A P. II.

Of the Transfer of Bills and Notes.

BILLS or Notes payable to order, or to bearer, or containing any words to make them assignable, may be assigned so as to give the assignee a right upon the Bill or Note against all the antecedent parties; and Bills or Notes containing no words to make them assignable may be assigned so as to give the assignee a right upon them against the assignor, but (a) not so as to give him a right against any of the antecedent parties.

Bills and Notes are assigned either by delivery only, or by indorsement and delivery. Bills and Notes payable to order are assignable by the latter mode only; Bills and Notes payable to bearer, and Bills and Notes originally payable to order,

(a) *Hill v. Lewis*. Salk. 132. Moor drew one Note payable to the Defendant, or his order, and another payable to him generally, without any words to make it assignable: the Defendant indorsed them to Zouch, and Zouch to the Plaintiff; the first objection was that the Plaintiff had been guilty of laches, but the Jury thought he had not; and it was then urged that the second Note was not assignable; and Holt C. J. agreed that the indorsement of this note did not make him that drew it chargeable to the Indorsee, for the words "*or to his order*" give authority to assign it by indorsement; but the indorsement of a Note which has not these words is good so as to make the Indorser chargeable to the Indorsee

and

and indorsed, as (*a*) they may be, so as to be payable to the bearer, by either.

On a transfer by delivery, the person making it ceases to (*b*) be a party to the Bill or Note; on a transfer by indorsement, he (*c*) is to all intents and purposes a new drawer.

Upon Bills and Notes for the payment of less than £5. the indorsement (*d*) must be attested by one subscribing witness.

No particular (*e*) words are essential to an indorsement; the mere signature (*f*) of the indorser is in general sufficient.

But the indorsement of a Bill or Note for the payment of less than five pounds must (*g*) mention the name and place of abode of the Indorsee, and bear date at or before the time of making it.

An indorsement which mentions the name of the person in whose favour it is made, is called a full

(*a*) See post p. 32.

(*b*) Vide *Ld. Raym.* 442. 724. 929. 930. 12 *Mod.* 241. 408. 517. 521. *Salk.* 128.—3 *Salk.* 68. *Comb.* 57.

(*c*) *Smallwood v. Vernon.* *Str.* 478. In an Action against the Indorser of a Note the Declaration stated that he became chargeable according to the tenor of the Indorsement: and it was objected that the indorsement might appoint the payment at a time different from that mentioned in the Note; sed per cur. if it did, it would charge the Indorser, for every indorsement is the same as making a new Note. Vide 2 *Show.* 501. *Comb.* 32. *Skin.* 255, 256. 342. 411. 3 *Mod.* 87. 12 *Mod.* 36. *Ld. Raym.* 181. 444. 744. *Salk.* 125. 132, 133. 3 *Salk.* 68. *Str.* 442. 479. 1 *Atk.* 282. 2 *Atk.* 182. *Burr.* 670. 675. *Dougl.* 613.

(*d*) Vide 17th *G. III.* c. 30. § 1. ante p. 5.

(*e*) Vide *Holt.* 117. *Ld. Raym.* 176. 810.

(*f*) Vide 12 *Mod.* 192. 244. *Salk.* 126. 128. 130. *Ld. Raym.* 444.

(*g*) Vide 17. *G. III.* c. 30. § 1. ante p. 5.

indorsement, an indorsement which does not, a blank one.

A blank indorsement, so long as it continues blank, makes a bill or note payable to the (a) bearer, but the holder may write over it what he pleases.

As long however as the first indorsement continues blank, the (b) bill or note, as against the Payee, the Drawer, and Acceptor, is assignable by mere delivery, notwithstanding it may have upon it subsequent full indorsements.

A full indorsement may restrain the negotiability of a bill or note.

(a) *Peacock v. Rhodes*. Dougl. 611—633. A Bill was drawn by the Defendant payable to Ingham or order, Ingham indorsed it in blank, after which it was stolen; the Plaintiff took it *bonâ fide*, and paid a valuable consideration for it, and acceptance and payment being refused, gave notice to the Defendant and brought this Action. A case was reserved for the opinion of the Court, and it was contended that this Bill was not to be considered as payable to Bearer, and that the Plaintiff had no better right upon it than the person of whom he took it; but the Court said there was no difference between a Note indorsed in blank, and one payable to bearer; and the Plaintiff had judgment. *Francis v. Mott*. N. P. before Ld. Mansfield cited Dougl. 612. was a similar case, and the Attorney General, who was for the Defendant, after attempting unsuccessfully to shew that the Plaintiff *knew* the Bill was obtained unfairly, gave up the cause.

(b) *Smith v. Clarke*, Peake 225. A Bill was indorsed in blank by the Payee, and after some other indorsements was indorsed to Jackson or order; Jackson sent it to Muir and Atkinson, but did not indorse it, and Muir and Atkinson discounted it with the Plaintiffs; the Plaintiffs struck out all the indorsements except the first, which continued blank. This was an Action against the Acceptor, and it was objected, that the Plaintiffs could not recover without an indorsement by Jackson; but Ld. Kenyon held otherwise, and the Plaintiffs recovered. The Plaintiffs afterwards proved that Jackson desired Muir and Atkinson to discount this Bill, but Ld. Kenyon thought the Plaintiff's case made out without this evidence.

An indorsement is restrictive, which either has express words making it so, or is made in favour of a person who cannot make a transfer.

Thus an indorsement in these words, "pay the contents to I. S. only," "to I. S. (a) for my use;" or (at least when addressed to the Drawee) (b) "the within must be credited to I. S." is restrictive.

But the (c) mere omission of words to give a power of transfer, will not make an indorsement restrictive.

A restrictive

(a) *P. Wilmot, J. Burr. 1227; Blackst. 299.* The Payee may check the currency of a Bill or Note by giving a bare authority to receive the money; as "Pay to A. for my use;" and per Lord Hardwicke in *Snee v. Prescott*, 1 Atk. 249. Bills and Notes are frequently indorsed in this manner "Pray pay the money to my use," in order to prevent their being filled up with such an indorsement as passes the interest.

(b) *Ancher v. Bank of England, Dougl. 615. 637.* A Bill was drawn by the Plaintiffs upon Claus Heide and Co. payable to Jens Mæstue or order. Mæstue indorsed it to this effect "The within must be credited to Captain M. L. Dahl, value in account" and sent it to Claus Heide and Co. who credited Dahl for the amount, and gave notice to Dahl and the Plaintiffs that they had done so; an indorsement by Dahl was afterwards forged upon the Bill, and the Bank discounted it. Claus Heide and Co. having become insolvent, Fulberg paid it for the honour of the Plaintiffs, and upon the ground that the indorsement had restrained the negotiability of the Bill, they brought an Action for money had and received against the Bank: Lord Mansfield directed a Nonsuit, but upon a Rule to shew cause why there should not be a new trial, and cause shewn, *Ld. Mansfield, Willes and Ashurst, Js.* thought the indorsement restrictive, and that the Plaintiffs were intitled to recover; but Buller J. thought otherwise; upon which Lord Mansfield said, the whole turned on the question, Whether the Bill continued negotiable? and if they altered their opinion they would mention the case again, but it never was mentioned afterwards, and upon a new trial Lord Mansfield directed the Jury to find for the Plaintiffs, which they did.

(c) *Moore v. Manning. Com. 311.* A Note was drawn by the Defendant payable to Statham or order; Statham indorsed it to Witherhead, but did not add "or to his order" and Witherhead indorsed it to the Plaintiff. The Defendant contended that as there were no express words to authorize

A restrictive indorsement precludes the person in whose favour it is made from making a transfer so as to give a right of action against either the person making it, or any of the antecedent parties, and (where the restriction is expressed upon the bill or note) (a) from retaining a payment to their prejudice.

An (b) indorsement cannot be made for the transfer of less than the full sum appearing to be due upon the bill or note.

A transfer

Witherhead to assign it, he had no such power, but the whole Court resolved that as the Bill was at first assignable by Statham as being payable to him or order, and as all Statham's interest was transferred to Witherhead, the right of assigning it was transferred also, and the Plaintiff had judgment.

Acheson v. Fountain, Str. 557. Bull. N. P. 275. A Bill was payable to Abercrombie or order, and he indorsed it thus "Pray pay the contents to Louisa Acheson." This being stated in the declaration as an indorsement to Acheson or order, it was objected that it was a fatal variance; but upon consideration the whole Court was of opinion against the objection, because this was the legal import of the indorsement, and Louisa Acheson was authorized by it to make an indorsement over.

Edie v. East India Company, Blackst. 295. Burr. 1216. A Foreign Bill drawn upon the East India Company was payable to Campbell or order; Campbell indorsed it to Ogilby, but did not insert the words "or order" or any similar words in the indorsement; Ogilby indorsed it to the Plaintiffs. It was insisted that under the indorsement to Ogilby he had no authority to indorse it over, and upon that ground the Jury found for the Defendants; but upon a rule to shew cause why there should not be a new trial, and cause shewn, the Court was clear, That as the Bill was originally in its nature negotiable, it continued so in the hands of Ogilby, and that his indorsement was good; and a new trial was granted.

(a) Vide Anchor v. Bank of England. ante p. 33. note (b).

(b) Hawkins v. Cardy, Ld. Raym. 360. Carth. 466. 12 Mod. 213. Salk. 65. In an action upon a Bill drawn by the Defendant for £46. 19s. payable to Blackman or order, the declaration stated that Blackman indorsed £43. 4s. of it to the Plaintiff; the Defendant pleaded an insufficient plea, upon which the Plaintiff demurred, but the whole court held the declaration bad, because
the

A transfer by indorsement will convey no title, except against the person making it, unless it is made by him who has a right to make the transfer: a transfer by delivery, may.

Therefore in case of a loss by theft or accident, if the Bill or Note be assignable by mere delivery, the thief or finder may (a) confer a title by transferring

the bill could not be indorsed for less than all the money due thereon, and the Plaintiff discontinued his action. And per Gould J. in *Johnson v. Ken- nion*, 2 Wils. 262. where the Drawer of a Bill has paid part, you may in- dorse it over for the residue; otherwise not, because it would subject him to a variety of actions.

(a) *Anon* Ld. Raym. 738. Salk. 126. 3 Salk. 71. B. lost a bank bill pay- able to A. or bearer; C. found it, and assigned it for a valuable consideration to D. who got a new bill for it from the Bank. Trover was then brought against D. for the first bill, but by Holt C. J. "the Action will not lie against him because he took it for a valuable consideration, though it would against C. as he had no title; but payment to C. would have indemnified the Bank."

Miller v. Race. Bur. 452. A Bank Note payable to Wm. Finney or bearer was stolen out of the Mail in the night of the 11th December, 1756, and on the 12th came to the hands of the Plaintiff for a full and valuable consideration, in the usual course of his business, and without any know- ledge that it had been taken out of the Mail; he afterwards presented it at the Bank for payment, and the Defendant being one of the clerks stopped it, upon which an Action of Trover was brought; and upon a case reserved upon the point, whether the Plaintiff had a sufficient property in the Note to entitle him to recover, the Court was clear in opinion that he had, and that the Action was well brought.

Grant v. Vaughan, Burr. 1516. Vaughan gave Bicknell a Draught upon his banker, payable to "Ship Fortune or Bearer." Bicknell lost it, and the Plaintiff afterwards took it, bona fide, in the course of trade, and paid a va- luable consideration for it: The banker refused to pay it, upon which the plaintiff brought this action against Vaughan. Lord Mansfield left it to the jury to consider, first, whether the plaintiff came to the possession of the bill fairly and bona fide; and 2dly, whether such draught was in fact and prac- tice negotiable; and the jury found for the defendant: But upon an applica- tion for a new trial, and cause shewn against it, the court was clear that the second point ought not to have been left to the jury, because it was clear that

ferring it; if it be not assignable otherwise than by indorsement he (*a*) cannot.

The right to transfer a Bill or Note, is in the Payee, or in the person to whom it has been transferred from him.

An indorsement by a person of the same name with the person intitled to transfer it is (*b*) void (except against the person indorsing it, and the subsequent indorsers) though the person intitled to transfer it was not particularly described upon the Bill or Note.

such draughts were negotiable, and if the jury thought the plaintiff took the note fairly and *bonâ fide*, of which there appeared to be no doubt, he was entitled to recover. A new trial was accordingly granted, in which the plaintiff recovered the money. *Peacock v. Rhodes*, Dougl. 611. 633. ante page 32.

By 9 & 10 W. III. c. 17. §. 3. "If any inland Bill be lost or miscarry within the time limited for its payment, the drawer shall, on security given upon request to indemnify him if such bill shall be found again, give another bill of the same tenor with the first." And it should seem that the equity of this statute would comprehend indorsements also, and that the 3 & 4 Anne, c. 9. (which gives the like remedies upon notes as were then in use on inland bills) would extend it to notes.

(*a*) In this case, however, it is advisable for the loser, in order to guard against the forgery of his indorsement, to give immediate notice of the loss to all the antecedent parties, and if payment has been made before such notice could be given, to apprise the payee thereof without delay.

(*b*) *Mead v. Young*, 4 Term Rep. 28. A Bill payable to Henry Davis or order, was sent by the post, and got into the hands of a wrong Henry Davis, who indorsed it to the plaintiff: there was no description of Henry Davis in the bill, or addition to his name, nor was any fraud imputable to the plaintiff. This was an action against the acceptor, and on his offering evidence to shew that the Henry Davis who indorsed the bill was not the person in whose favour it was drawn, Lord Kenyon was of opinion that the evidence was inadmissible, and he retained that opinion after cause shewn against an application for a new trial; but Ashhurst, Buller, and Grose, Js. held, that unless the indorsement was made by the person to whom the bill was really payable, it was a forgery, and could confer no title, and that therefore it was competent for the defendant to shew that the person who indorsed the bill was not the person in whose favour it was made, and a new trial was accordingly granted.

On a Bill or Note payable to *A.* for the use of *B.* the (*a*) right to transfer is in *A.*

On a Bill or Note payable to *several persons*, not in partnership, the right to transfer is in all collectively, not (*b*) in any individually.

If the right to transfer a Bill or Note be in a feme sole, and she marry, it (*c*) devolves upon her husband.

(*a*) *Evans v. Cramlington*, Carth. 5. 2 Vent. 307. Skinn. 264. A Bill was payable "to Price or order, for the use of Calvert." Price indorsed it to Evans, after which an extent issued against Calvert, and the money due upon it was seized to the use of the King. These facts appearing upon the pleadings, two points were made upon demurrer; the one, whether Calvert had such an interest in the money as might be extended; and the other, whether Price had power to indorse the bill, or whether he had only a bare authority to receive the money for the use of Calvert; and the court of King's Bench, and afterwards the Exchequer Chamber, held that Calvert had not such an interest as could be extended, and that Price had power to indorse the bill, and judgment was given for the plaintiff.

(*b*) *Carvick v. Vickery*, Dougl. 2d edit. p. 653. n. 134. A Bill was drawn by father and son, who were not partners, payable to *their own order*. The son alone indorsed it, and upon an action by his indorsee against the acceptor, Lord Mansfield thought an indorsement by both parties essential, and nonsuited the plaintiff. A new trial however was afterwards granted, the court, after time taken to consider, being of opinion that by making the bill payable to their own order, the father and son had made themselves partners as to this transaction; but upon the second trial Lord Mansfield said he did not think the question so decided as to preclude evidence which was offered, that by the universal usage and understanding of all the Bankers and Merchants in London the indorsement was bad, as not being signed by both the payees, and the Jury, *unà voce*, declared that that was the usage and understanding, and without hearing any evidence upon the point they found a verdict for the defendant.

(*c*) *Connor v. Martin*, Str. 516. cited 3 Wils. 5. A Bill was made payable to Susan Connor or order, while she was sole: She married, and during her coverture indorsed it to the plaintiff, and upon demurrer and argument the court of Common Pleas held, that the feme covert could not assign the note, because by the marriage it became the sole right and property of the husband; and by Parker, C. J. in *Miles v. Williams*, 10 Mod. 246. if a note be payable to a feme sole or order, and she marries, her husband is the proper person to indorse it.

If the person who has the right to transfer a Bill or Note die, it (*a*) devolves upon his personal representative; if he becomes bankrupt, on his assignees.

But if an executor or administrator indorse, he binds himself personally, not the assets in his hands. (*b*)

The transfer of a Bill or Note may be made either before the expiration of the time limited for its payment, or, unless (*c*) the sum payable thereby be under five pounds, (*d*) afterwards.

But where a Bill or Note is indorsed over after the time appointed for its payment, if there is any fraud in the transaction, it (*e*) ought to be left to the
Jury

(*a*) *Rawlinson v. Stone*, 3 Wils. 1. Str. 1260. 2 Barnes 137. A Note was payable to A. B. or order: A. B. died intestate, and his administrator indorsed it to the plaintiff. These facts appearing upon the declaration, the defendant demurred, and contended that the personal representative of the payee had no power to indorse a note, but the court of Common Pleas after three arguments, and the court of King's Bench upon error brought, were unanimously of opinion that he had, and each court said, it was every day's practice, and the constant usage for executors and administrators to indorse Bills and Notes payable to the order of their testators or intestates.

(*b*) *King v. Thom.* 1 Term, Rep. 487. The court held that upon a Bill payable to several as executors, they might sue as executors; and per Buller J. no inconvenience can arise from their indorsing the Bill; for if they indorse, they are liable personally, and not as executors; for their indorsement would not give an action against the effects of the Testator.

(*c*) Vide 17th G. III. c. 30. §. 1. ante p. 5.

(*d*) *Dehors v. Harriott*, 1 Show. 163. A Bill was indorsed to the Plaintiff after it was due, and he had judgment without any objection on this ground.

Mutford v. Walcott, Lord Raym. 575. Holt C. J. said he remembered a case where a Bill was negotiated after the day of payment, and he had all the eminent merchants in London with him at his chambers, and they all held it to be very common, and usual, and a very good practice.

(*e*) *Taylor v. Mather*, B. R. E. 27 G. III. 3 Term Rep. 83. n. Indorsee of a Note against the maker. It appeared to have been indorsed after it was due

Jury upon the slightest circumstance, to presume that the Indorsee knew of such fraud.

And though he was ignorant of the fraud, any (*a*) objection which might have been taken against the Indorser may be taken against him, if the Bill or Note appeared upon the face of it, when he took it, to have been dishonoured.

And it has been (*b*) held that he is liable to the same objections as the Indorser, though there is no such

due, and there were many circumstances which led the court and jury to conclude it had been unfairly obtained, upon which the jury found for the Defendant. A new trial was refused upon the merits, and per Buller J. "it has never been determined that a Bill or Note is not negotiable after it is due, but if there are any circumstances of fraud in the transaction, and it is indorsed to the Plaintiff after it is due, I have always left it to the jury upon the slightest circumstance to presume that the Indorsee was acquainted with the fraud." The rest of the court concurred in this opinion.

(*a*) *Brown v. Davies*, 3 Term Rep. 80. Davies drew a Note payable to Sandall or order; Sandall indorsed it to Taddy, and he had it presented, and noted for non-payment. Davies then paid the money to Sandall, and he took up the Note from Taddy, but instead of returning the Note to Davies, indorsed it to Brown. Brown thereupon sued Davies, and on Davies's offering to prove these facts, Lord Kenyon thought they would not amount to a defence, unless it could be proved that Brown knew them when he took the Note, and he rejected the evidence; but upon a rule nisi for a new trial, and cause shewn, Lord Kenyon said, he thought there ought to be further inquiry; it did not strike him at the trial that the Note had been noted before Brown took it, and that that circumstance ought to have awakened Brown's suspicion. Ashhurst and Buller Js. thought that the party taking a Note after it was due was to be considered as taking it on the credit of the person from whom he received it, and that whatever would be a defence against the giver, would be a defence against the receiver, upon which Lord Kenyon said, he agreed with that, if the Note appeared on the face of it to have been indorsed, or if knowledge could be brought home to the Indorsee, that it had been so, but otherwise he was not prepared to go that length. Grose J. said, if collusion could be proved between the defendant and Sandall, the defendant would not be intitled to insist on the objection; but as the case then stood he thought there ought to be a new trial. Rule absolute.

(*b*) *Banks v. Colwell*, Launceston Spring Assizes, 1788, before Buller J. cited 3 Term Rep. 81. Indorsee of a Note payable on demand, against the

such appearance on the face of the Bill or Note, but (a) that doctrine has been doubted.

A Bill or Note cannot be (b) indorsed or negotiated after it has been once paid, if such indorsement or negotiation would make any of the parties liable who would otherwise be discharged.

If a (c) man indorse a Bill or Note before the sum or time of payment be mentioned therein, he will be precluded from saying that his Indorsement was prior to the completion or issuing of the Bill or Note, even against a person who knew when he took it in what state the Bill was at the time of the indorsement.

Maker. The Note was given for smuggled goods; part of it was paid; and it was not indorsed to the Plaintiff till a year and a half after it was given; no privity was brought home to the Plaintiff, but Buller J. was clearly of opinion he ought to be nonsuited; and he said it had been repeatedly ruled at Guildhall, that if a Bill or Note was indorsed over after it was due, the Indorsee took it on the credit of the Indorser, and stood in his situation.

(a) Vide *Brown v. Davies*, ante p. 39. note (a)

(b) *Beck v. Robley*, B. R. Tr. 14 G. III. cited 1 H. Blackst. 89 n. Brown drew a Bill upon Robley, which Robley accepted, payable to Hodgson or order; Robley did not pay it when it was presented, upon which Brown took it up; Brown afterwards indorsed it to Beck, and Beck brought an action upon it against Robley, but the Jury thought that when Brown took up the Bill, its negotiability ceased, and found for the Defendant, and on a rule nisi for a new trial, the court thought the Jury right, and Lord Mansfield said, "when a draft is given payable to A. or order, the purpose is, that it shall be paid to A. or order, and when it comes back unpaid, and is taken up by the Drawer, it ceases to be a Bill. If it were negotiable here, Hodgson would be liable, for which there is no colour."

(c) *Russell v. Langstaff*, Dougl. 496. 514. The Defendant to accommodate Galley, indorsed his name on five copper plate checks, made in the form of promissory notes, but in blank, without any sums, dates or times of payment being mentioned therein, and delivered them to Galley; Galley filled them up as he thought fit, and the Plaintiff discounted them; the Plaintiff knew the Notes were blank at the time of the indorsement; Galley

not

Upon the transfer of a Bill drawn in Sets, each part must be delivered to the person in whose favour the transfer is made ; otherwise the same inconveniencies may follow, which would ensue upon a neglect to deliver each of them to the Payee.

The indorsement of a Bill or Note, implies an undertaking from the Indorser to the person in whose favour it is made, and every other person to whom the Bill or Note may afterwards be transferred, exactly similar to that which is implied by drawing a Bill, except that in the case of a Note, the stipulations with respect to the Drawer's responsibility and undertaking do not apply ; and a transfer by delivery only, if made on account of an antecedent debt, implies a similar undertaking from the person making it, to the person in whose favour it is made.

not paying them when they became due, the Plaintiff brought this action. Hotham B. before whom the cause was tried, was of opinion, that as the Notes were incomplete when the Defendant indorsed them, no subsequent act of Galley could make them otherwise, because that would alter the effect of the Defendant's indorsement, and he accordingly directed a verdict for the Defendant ; but upon an application for a new trial and cause shewn, Mr. Wallace the Attorney General, gave up the point, though Mr. Lee afterwards argued it, and Lord Mansfield said, " Nothing is so clear as the point ; the Indorsement on a Blank Note is a letter of credit for an indefinite sum ; the Defendant said, trust Galley to any amount, and I will be his security ; it does not lie in his mouth to say, the indorsements were not regular." A new trial was accordingly granted, and a verdict having been found for the Plaintiff in a similar action before Lord Mansfield, the Defendant submitted in this, without going to a second trial.

G

C A P. III.

Of the Acceptance of Bills.

THE doctrine of acceptances applies to Bills only ; for a Note may (a) be considered, on comparison with a Bill, as accepted when it issues.

An acceptance is an engagement to pay a Bill according to the tenor of the acceptance, and a general acceptance is an engagement to pay according to the tenor of the Bill.

This engagement is made by the Drawee of the Bill or some (b) other person, to the (c) Drawer or some

(a) D. acc. 2 Bl. Comm 470.

(b) *Mutford v. Walcott*, Lord Raym. 575. 12 Mod. 410. Com. 76. per. Holt C. J. "If A. draws a Bill on B. and B. will not accept, and C. offers "to accept for the honour of the Drawer, the holder need not acquiesce, but "if he does C. is bound." And per Lord Mansfield and Yates J. in *Pillans v. Van Mierop*, Burr. 1672. 1674. an acceptance for the honour of the Drawer will bind the Acceptor.

(c) *Pillans and another v. Van Mierop*, Burr. 1663. White drew on the Plaintiffs at Rotterdam for £800. and proposed to give them credit upon the Defendant's house in London ; the Plaintiffs paid White's bill, and wrote to the Defendants to know "Whether they would accept such bills as they " (the Plaintiffs) should draw in about a month upon them for £800. on "White's credit." The Defendants answered, that they would, but White having failed before the month elapsed, the Defendants wrote to the Plaintiffs not to draw. The Plaintiffs did however draw, and on the Defendant's refusal to pay the bills brought this action. The jury found a verdict for the Defendants, but upon an application for a new trial, as upon a verdict against evidence, and two arguments upon it, the court was unanimous that the Defendant's letter was a virtual acceptance of such bills as the Plaintiff should draw to the amount of £800. and the rule was made absolute.

some of the other parties, before the (a) Bill is drawn

Pierfon v. Dunlop and others, Cowp. 571. M'Lintot drew upon the Defendants in favour of Nicholl, and gave Nicholl a navy bill assigned to the Defendants as a security till the bill of exchange should be accepted; both bills were sent to the Defendants, who said, the bill of exchange would not be accepted till the navy bill was paid, but they would receive the money on the navy bill; and they wrote to M'Lintot saying his bill would receive due honour, but it was drawn too short, being payable before the navy bill; they afterwards received the money on the navy bill, but refused to pay the bill of exchange, upon which this action was brought: the Plaintiff obtained a verdict, but the Defendants had a rule to shew cause why there should not be a new trial, and insisted that the letter to M'Lintot, upon which the jury had in some measure relied, was no acceptance; but on cause shewn, Lord Mansfield said, "I consider what the Defendants did as an acceptance; it has been truly said, as a general rule, that the mere answer of a merchant to the Drawer of a bill, saying—he will duly honour it, is no acceptance, unless accompanied with circumstances which may induce a third person to take the bill by indorsement—if there are any such circumstances, it may amount to an acceptance, though contained in a letter to the Drawer; in this case, there is great reason to say, that what the Defendants did was equivalent to an acceptance; there may be a conditional, as well as an absolute acceptance, what then is the declaration by the Defendants, but an undertaking that the bill should be accepted, when the navy bill was paid; after this he writes this letter, which is an admission he looked to the navy bill as the fund out of which the bill of exchange was to be paid." A new trial was refused.

Mason v. Hunt, Dougl. 284. 297. Rowland Hunt in Dominica wrote a letter to his partner Thomas Hunt in London, stating that he had agreed that Thomas should accept bills for £3600. upon certain conditions; it was doubtful whether those conditions had been performed, but at all events it was clear that the obligation created by this letter was waived; an action was however brought against the Hunts, and after a verdict for the Defendants and an application for a new trial, upon which the court took time to consider, Lord Mansfield said, "There is no doubt but an agreement to accept may amount to an acceptance, and it may be couched in such terms as to put a third person in a better situation than the Drawer."

Powell v. Monnier, 1 Atk. 611. Newburgh drew upon Monnier for £50. and sent him a letter of advice, and Monnier wrote for answer that the bill should be duly honoured, and placed to Newburgh's debit. A bill in chancery was afterwards filed against Monnier's executrix, upon the ground that this letter amounted to an acceptance, and Lord Hardwicke thought it clear that it did, and decreed payment.

(a) Vide *Pillans v. Van Mirop* and *Mason v. Hunt*, ante p. 42. Note (c)

drawn or (*a*) afterwards, verbally (*b*) or in writing; and is either absolute or (*c*) conditional, and when made after the drawing of the Bill, is according to or (*d*) varying from its tenor.

(*a*) Vide *Powell v. Monnier*, ante p. 42. note (*c*).

(*b*) *Cox v. Coleman*, M. 6 G. II. cited arguendo Ann. 75. A foreign bill drawn on Defendant was protested for non acceptance and returned, and afterwards Defendant told the Plaintiff, "if the bill comes back, I will pay it;" and this was held a good acceptance.

Lumley v. Palmer, Str. 1000 Ann. 74. In an action against the Defendant as acceptor of a bill, the acceptance appeared to be by parol only; which Lord Hardwicke C. J. ruled to be sufficient; but Eyre C. J. of the common pleas having ruled it otherwise in *Reo v. Meggott*, H. 7 G. II. an application was made for a new trial, and the court to settle the point ordered it to be argued; upon the argument the court held Lord Hardwicke's direction right, and Eyre C. J. waived his opinion and agreed with the court of King's Bench; and this determination is referred to and approved of in *Julian v. Shobrooke*, 2 Wils. 9. *Powell v. Monnier*, 1 Atk. 612. and in *Pillans v. Van Mierop*, Burr. 1662. Lord Mansfield says, a verbal acceptance is binding; and in *Sproat v. Matthews*, 1 Term Rep. 182, it was taken for granted by the court and bar, that a parol acceptance was good. See also Str. 817.

(*c*) *Smith v. Abbott*, Str. 1152. Defendant accepted a bill to pay when goods consigned to him were sold; he sold the goods, and on being sued upon his acceptance insisted in arrest of judgment that it was not binding because it was conditional; but the court on consideration held, that though the Plaintiff might have refused to take it, and have protested the bill, yet as he did take it, it was binding on the Defendant.

Julian v. Shobrooke, 2 Wils. 9. The Defendant accepted a bill to pay, when in cash, for the cargo of the ship *Thetis*; and on being sued, moved in arrest of judgment that a conditional acceptance was not good; but the court held otherwise, and over-ruled the objection.

Pierfon v. Dunlop, Cowp. 571. ante p. 43. An answer that the bill would not be accepted till a navy bill was paid, was held a conditional acceptance to pay, when the navy bill should be discharged.

(*d*) *Wegerloff v. Keene*, Str. 214. A foreign bill for £127. 18s. 4d. was drawn on the Defendant, and he accepted it to pay £100. part thereof; he was sued upon this acceptance, and on demurrer to the replication, insisted that a partial acceptance was not good within the custom of merchants; but the court held otherwise, and judgment was given for the Plaintiff.

Walker

An acceptance is seldom made before the Bill is drawn by any other person than the Drawee ; afterwards for the purpose either of promoting the negotiation of a Bill where the Drawee's credit is suspected, or to save the reputation and prevent the prosecution of some of the parties where the Drawee either cannot be found, is not capable of making himself responsible, or refuses acceptance, it is not uncommon ; and it is called an acceptance for the honour of the (a) person on whose account it is made, and enures to the benefit of all the parties subsequent to that person.

Such of these acceptances as are made with the former view are considered as made on account of the person in possession of the Bill at the time they are made, and such as are made with the latter, unless they declare the contrary, on account of the Drawer.

Walker v. Atwood, 11 Mod. 190. A bill was drawn on the Defendant 8th of April; and no time fixed for its payment it was presented to Defendant 18th April, and he accepted it to pay 8th September; this being stated in the declaration, the Defendant demurred, and insisted that as no time was prescribed for the payment, the bill was payable at sight, and then a promise to pay two or three months after sight, was not an acceptance within the custom of merchants; but the court held it was an acceptance within the custom, and the demurrer was overruled.

Petit v. Benson, Comb. 452. A bill was accepted to be paid, half in money and half in bills; and the question was, whether there could be a qualification of an acceptance, and it was proved by divers merchants that there might, for he that might refuse the bill totally, might accept it in part; but that the holder was not bound to acquiesce in such acceptance.

(a) Vide *Lutw.* 899. *Beawes*, §. 34 1st ed. p. 418. §. 40. 42. 1st ed. p. 419.

If

If a Bill is drawn on several persons not connected in partnership, an acceptance by one will bind him, but him (a) only.

On a Bill drawn upon a man by the description of servant, a general acceptance will (b) bind him personally.

An acceptance after the Bill is drawn may be made even after (c) the time appointed for its payment.

(a) Bull. nisi prius, 279. In the case of two joint traders, an acceptance by one will bind both ; but if ten merchants employ one factor, and he draw a bill upon them all, and one accept it, this shall only bind him, and not the rest. Mar. 2d ed. 16. Beawes §. 228. 1st ed. p. 444. Molloy B. 2 c. 10. §. 18.

(b) Thomas v. Bishop, Ann. 1. Str. 955. A Bill for £200. was drawn upon the Defendant by the description of *Mr. H. Bishop, cashier of the York Buildings company, at their house in Winchester-street, London*; and the bill directed him to place the £200. to the account of the company, the Defendant accepted the bill, but on being sued, insisted that the acceptance did not bind him personally, and gave in evidence that the letter of advice from the Drawer of the bill was sent to the company ; but Page J. directed the jury to find for the Plaintiff, which they did, and upon a rule to shew cause why there should not be a new trial, the whole court held the direction right, that the addition to the Defendant's name was only to describe him with more certainty, and to point out where he was to be found, that the direction to place the money to the account of the company was for the use of the Drawee only, and that the letter of advice could not vary the case against an Indorsee (which the Plaintiff was) because an Indorsee could only look to the bill itself.

(c) Jackson v. Piggot, Lord Raym. 364. Salk. 127. Carth. 459. 12 Mod. 212. In an action against the acceptor of a bill, the declaration stated that it was dated 25th March 1696, payable one month after date, and that in April 1697, it was shewn to the Defendant, and he promised to pay it according to its tenor and effect ; after verdict for the Plaintiff, it was moved in arrest of judgment, that the promise was void, because as the day of payment was past at the time of the acceptance, it was impossible to pay the bill according to its tenor and effect ; but it was answered for the Plaintiff, that it amounted to a promise to pay generally ; and of that opinion was the court, and they accordingly gave judgment for the Plaintiff.

Mutford v. Walcot, Lord Raym. 574. Salk. 129. 12 Mod. 410. Com. 75. is precisely to the same effect.

In such case an acceptance to pay according to the tenor, will (a) be considered as a general acceptance to pay upon demand.

A written acceptance is either made upon the Bill or (b) elsewhere.

On a written acceptance by the Drawee, his name need not appear, and any words written by him upon the Bill, not putting a direct negative upon its request, as, "accepted," (c) "presented," "seen," (c) "the day of the month," or a (d) direction

(a) Vide Jackson v. Piggott, and Mutford v. Walker, ante, p. 46. note (c)

(b) Vide Pillans v. Van Mierop, Mason v. Hunt, Powell v. Monnier, and Pierfon v. Dunlop, ante, p. 42. note (c)

(c) Anon. Comb. 401. per Holt, C. J. If the Drawee underwrites a Bill "presented such a day, or only the day of the month," 'tis such an acknowledgement of the Bill as amounts to an acceptance; and this was declared by the jury to be the common practice.

Powell v. Monnier, 1 Atk. 611. A Bill was sent by the post to the Drawee for acceptance; he entered it in his bill book (which was his practice with all bills he received, whether he meant to accept them or not) wrote upon it the number of the entry, and kept it ten days; on the tenth he wrote upon it the day of the month, and returned it, saying he could not accept it, and per Lord Hardwicke, "It has been said to be the custom of merchants, that if a man underwrites any thing, be it what it may, it amounts to an acceptance; but if there were nothing more than this in the case, I should think it of little avail to charge the Defendant," but he decided that a letter the Drawee had written amounted to an acceptance. Vide ante, p. 43. note (c)

(d) Moor v. Whitby, B. R. Tr. 10 G. III. Bull. ni. pr. 270. A bill drawn by Newton on Whitby, was presented for acceptance, and Whitby wrote upon it "Mr. Jackson please to pay this note, and place it to Mr. Newton's account, R. Whitby;" it was insisted that this was no acceptance, but merely a direction to Jackson to pay it out of a particular fund, and if there was no fund, there was to be no payment; sed per cur. this is a direction to Jackson to pay the money; and it signifies not to what account it is to be placed; that is between Jackson and Whitby only; this is clearly an acceptance.

direction to a third person to pay it, is *primâ facie* a complete acceptance.

Nay a (*a*) modern reporter of some authority would wish us to believe that an express refusal to accept, written on a Bill, is an acceptance; but this is not the case, unless it is accompanied with a conduct which shews an intent to deceive the person taking the Bill away into a belief that it is accepted.

On a written acceptance by any other person than the Drawee it should seem essential that his name should appear.

A promise to accept, if made upon an (*b*) executed consideration, or if it (*c*) influences any person to take or retain the Bill, is a complete acceptance as to the person to whom the promise is made in the one case, and the person influenced in the other, and all the subsequent parties in each.

Thus a (*d*) promise to accept such Bills as B. should after the expiration of a month draw on account of a debt from C. to B. was held a complete acceptance.

But

(*a*) In Ann. 75. is this note. "Underwriting or indorsing a Bill thus," "I will not accept this Bill," is held by the custom of merchants a good acceptance, but by Lord Mansfield in *Peach v. Kay*, in Sittings after Trinity Term 1781, "It was held by all the Judges that an express refusal to accept written on the Bill, where the Drawee apprized the party who took it away what he had written was no acceptance; but if the Drawee had intended it as a surprize upon the party, and to make him consider it as an acceptance, they seemed to think it might have been otherwise."

(*b*) Vide *Pillans v. Van Mierop*, ante, p. 42. note (*c*)

(*c*) Vide *Pierfon v. Dunlop*, and *Mason v. Hunt*, ante, p. 42. note (*c*)

(*d*) *Pillans v. Van Mierop*, ante, p. 42. note (*c*)

(*a*) In

But a promise to accept, made upon an executory consideration is not (a) binding so long as such consideration remains executory, unless it influences some person to take or retain the Bill.

So a verbal promise to accept, though the party expressly defer a written acceptance, as where he says, "Leave the Bill and I will accept it," is a (b) complete acceptance. So a verbal promise to accept a returned Bill when it shall come back, is binding (c) if it do come back.

An answer by the Drawee when a Bill is called for, "there is your Bill, it is all right," is no (d) acceptance.

An acceptance to pay when remitted for is (e) a conditional acceptance.

(a) In *Pillans v. Van Meierop*, ante p. 23. note (c). Burr. 1666. Lord Mansfield says, "It was argued upon at the trial, that this imported to be a credit given to the Plaintiffs in prospect of a future credit to be given by them to White, and this credit might well be countermanded before the advancement of any money. *And this is so.*"

(b) *D. Molloy*, B. 2. c. 10. §. 20. Mar. 2d ed. 17.

(c) *Cox v. Coleman*, ante p. 44. note (b)

(d) *Powell v. Jones, Espinasse*, 17. In an action against the Defendant as acceptor of a Bill, the only evidence to prove the acceptance was, that when the Bill was called for he returned it, and said, "there is your Bill, it is all right." Lord Kenyon thought these words could by no implication amount to an acceptance, and nonsuited the Plaintiff. Vide ante p. 48. note (a)

(e) *Banbury v. Liffett*, Str. 1211. The Drawee accepted a Bill "for *Liffett and Galley of Leghorn, to pay as remitted from thence at usance*," and it was objected in an action against him that there was no evidence to shew he had a remittance, and that his acceptance was conditional only. Lee C. J. declared he so understood it, but he left it to the Jury, and they found for the Defendant upon another point, and gave no opinion upon this.

So an answer by a Drawee who lived in London, that a ship was consigned to him and a person in Bristol, and that till he should know to which port the ship would come he could not accept, connected with a subsequent answer that the Bill was a good one, and would be paid though the ship should be lost, was (a) held a conditional acceptance only; it being clear, that the Drawee looked for an opportunity of reimbursing himself, and had three events in contemplation, the ship's arrival at Bristol, her arrival at London, and her loss: in the two latter he should have the opportunity, and therefore accepted; in the former, he should not, and did not accept.

But an answer by the Drawee, that he would pay if I. S. would not, but that he must first apply to him, not that he thought he would pay, but because he judged it right to put him to the trial, with an assurance to the holder, that he might rest satisfied of the payment, was held (b) an absolute acceptance.

(a) This was the case of *Sproat v. Matthews*, 1 Term Rep. 182. The ship did arrive at London, and the Defendant disposed of the Cargo; but it appearing that upon the Defendant's answer that the Bill would be paid though the ship should be lost, the Plaintiff noted the bill for non-acceptance. Buller J. held that the acceptance was conditional only, and that the noting shewed the Plaintiff did not choose to take it, and directed a nonsuit; and upon a rule to shew cause why there should not be a new trial, the Court, viz. Willes, Ashurst, and Buller Js. concurred that the acceptance was conditional only, but Willes J. thought if there were a doubt whether it was conditional, or whether the Plaintiff had precluded himself from insisting upon it, all the facts should have been left to the jury, and he was therefore of opinion that the nonsuit should be set aside; but the other Judges thought differently, and the rule was discharged.

(b) *Wilkinson v. Lutwidge*, Str. 648. Two Bills drawn on the Defendant were sent to him by the Plaintiff's agent for acceptance, and he wrote for
answer,

If a man purposes making a conditional acceptance only, and commits that acceptance to writing, he should be careful to express the conditions therein: for of any verbal condition he may annex to the acceptance he will not be at liberty to avail himself against (a) any subsequent party, if either such party, or any intermediate one between him and the person to whom the acceptance was given, took the Bill without notice of such condition, and gave a valuable consideration for it, and at all events the onus of proving such condition will be upon the acceptor.

A conditional acceptance becomes absolute, as soon as its conditions are performed.

Thus an answer by the Drawee, that he could not accept until a navy Bill should be paid, was

answer, "The two bills which you sent me, I will pay if the owners of the Queen Anne do not: and they living in Dublin must first apply to them: I hope to have their answer in a week or ten days: I do not expect they will pay them, but I judge it proper to take their answer before I do, which I request you will acquaint Mr. Wilkinson with, and that he may rest satisfied of the payment. He afterwards wrote, "I have not had an opportunity of sending the bills to the Owners of the Queen Anne, but will take the first opportunity, and shall then remit to the gentlemen concerned, according to my promise." One of the bills he paid, but being sued upon the other he contended, that his acceptance was conditional only, to pay if the Owners of the Queen Anne did not: but Raymond C. J. held it an absolute acceptance, and that the attempt to procure payment from the Owners of the Queen Anne was to be made by him, and was wholly for his benefit and accommodation, but that the Plaintiff was to have his money at all events. The Jury found accordingly for the Plaintiff.

(a) *Mason v. Hunt*, Dougl. 286. 299. Per Lord Mansfield, "If an agreement to accept is conditional, and a third person takes the bill knowing of the conditions, he takes it subject to them."

thought (a) to operate as an absolute acceptance upon the payment of the navy bill.

But if the Drawee says he cannot accept without further directions from I. S. and I. S. afterwards desires him to accept, and draw upon A. B. for the amount, the (b) mere drawing upon A. B. will not make this an acceptance although the actual payment of the Bill on him may.

An acceptance varying from the tenor differs from it either in the (c) sum, the (d) time, the (e) place, or (f) mode of payment.

But though any of these acceptances bind the person making them, the holder of a Bill is intitled from the undertaking of the Drawer and Indorsers to expect an absolute acceptance by (g) the Drawee,

(a) *Pierfon v Dunlop*, ante p. 42. note (c)

(b) *Smith and another v. Nissen and another*, 1 Term Rep. 269. Taubert ordered goods of the Defendants, and desired them to draw on the Plaintiffs for the amount, which they did: the Plaintiffs wrote two letters to the Defendants, one saying they could not accept, because the Defendants had sent more goods than were ordered, but that they had written to Taubert for further directions; the other saying they had written to Taubert, and were waiting his answer before they could accept, but had desired the holder to keep the bill; in the mean time Taubert desired the Plaintiffs to accept, and draw on Goverts for the amount; they accordingly drew on Goverts, who refused to accept, and upon that they paid the bill for the honour of the Defendants, and brought an action against them for money paid; the Plaintiffs had a verdict, but the Defendants moved for a new trial on the ground that the drawing on Goverts was an acceptance of the bill drawn by the Defendants. Sed per cur. What the Plaintiffs did did not amount to an acceptance, for they never meant to make themselves liable, unless the bill they drew was accepted and paid, and a rule was refused.

(c) Vide *Wegersloff v. Keene*, ante p. 44. note (d)

(d) Vide *Walker v. Atwood*, ante p. 44. note (d)

(e) *Bishop v. Chitty and Smith v. De la Fontane*, post.

(f) Vide *Petit v. Benson*, ante p. 44. note (d)

(g) Mar. 2d ed. 22.

or if there be several not connected in partnership by (a) each, for the payment of the full (b) sum of money mentioned therein, (c) according to its tenor, specifying (d) (if none be mentioned for the purpose) a place for its payment, and (e) expressing, if the Bill be payable within a limited time after sight, the time of its presentment for acceptance; and may reject any other.

If upon the offer of any other acceptance the holder does any act expressing a non acquiescence therein, as if he gives notice to any of the antecedent parties generally that acceptance is refused, or notes the Bill for non-acceptance, the offer (f) is not binding.

There is a case (g) however in which it has been supposed to have been decided, that if the holder

(a) Molloy B. 2. c. 10. §. 18, 19. Mar. 2d ed. 16.

(b) Molloy, B. 2. c. 10. §. 20. Mar. 2d ed. 17. Beawes, §. 218. p. 443.

(c) Molloy, B. 2. c. 10. §. 28. Mar. 2d ed. 21. Beawes, §. 221. p. 444.

(d) Mutford v. Walcot, Lord Raym. 575. per Holt C. J. " If a bill be payable at London, and the person on whom it is drawn accept it, but names no house where he will pay it, the party that has the bill is not bound to be satisfied with this acceptance.

(e) Beawes, p. 452. Where a bill is drawn payable at so many days sight, the acceptance must express the day it is made.

(f) Sproat v. Matthews, ante p. 50, note (a).

(g) Price v. Shute, Beawes, § 222. 1st ed. p. 444. Moll. B. 2. c. 10. § 28. A Bill was drawn payable 1st January, and the drawer accepted it to pay the first of March: the holder struck out the first of March and substituted the first of January, and sent the bill for payment on that day, which the acceptor refused: the holder then struck out the first of January and restored the first of March, and in an action on this bill, the question was, Whether these alterations did not destroy the bill? and Pemberton C. J. ruled that they did not.

strikes out an acceptance which varies from the tenor of the Bill, and substitutes an acceptance according to the tenor, he may afterwards restore the acceptance he struck out, and that such acceptance will continue binding, but it has (*a*) been doubted whether the determination went farther than to decide that the alteration in the acceptance (though it annulled the acceptance and discharged the acceptor) did not destroy the Bill as to the other parties.

This waiver may be either expressed or implied.

The obligation also of a complete acceptance may be (*b*) waived.

An (*c*) agreement to consider an acceptance as at an end, or a (*d*) message to the acceptor upon an accom-

² (*a*) In *Master v. Miller*, 4 Term Rep. 350. *Ld. Kenyon* in commenting on the case of *Price v. Shute* observes, that the books do not say against whom the action was brought; and it could not have been against the acceptor, because his acceptance was struck out by the party himself who brought the action; and he concludes, "that on the person to whom the bill was directed refusing to accept the bill as it was originally drawn, the holder resorted to the drawer;" however *Buller J.* 4 Term Rep. 336. says he cannot consider this case in any other light than as an action against the acceptor, because the books only state what passed between the holder and the acceptor.

(*b*) Vide *Walpole v. Pulteney*, *infra* note (*c*) *Black v. Peele* *infra* note (*d*) and *Mason v. Hunt*, p. 55. note (*a*) and in *Dingwall v. Dunster*, post p. 56. note (*a*) the whole court held, that though nothing short of an express agreement would discharge the acceptor, an express agreement would.

(*c*) *Walpole v. Pulteney*, cited *Dougl.* 236, 237.—248, 249. *Walpole* held a bill accepted by *Pulteney*, but agreed to consider his acceptance as at an end, and wrote in his bill book, opposite the entry of this bill, "Mr. *Pulteney's* acceptance at an end." *Walpole* kept the bill from 1772 to 1775, without calling upon *Pulteney*, and then brought this action. The jury found a verdict for the Plaintiff, but the Court of Exchequer thought the verdict wrong, and granted a new trial, upon which the jury found for the Defendant.

(*d*) *Black v. Peele*, cit *Dougl.* 236, 237.—248, 249. *Black* arrested *Peele* as acceptor of a bill drawn by *Dallas*, but on finding that the acceptance was

accommodation Bill, that the business was settled with the Drawer, and he need give himself no further trouble, is an express waiver; the receipt (*a*) of the known consideration of the acceptance, an implied one.

If the holder of a Bill receives a part of the money from the Drawer, and takes a promise from him upon the back of the Bill for the payment of the residue at an enlarged time, it (*b*) is for a Jury
to

an accommodation one, his attorney took a security from Dallas, and sent word to Peele, that he had settled with Dallas, and that Peele need give himself no further trouble; Dallas afterwards became bankrupt, upon which Black again sued Peele; but it was held that as Black had in express words discharged Peele, the action could not be maintained.

(*a*) *Mason v. Hunt*, Dougl. 284. 297. ante p. 42. note (*c*). Rowland Hunt agreed that his Partner Thomas Hunt should on consignment of a cargo and an order for its insurance accept bills for £3,600. The cargo was consigned, the order for insurance given, and Thomas Hunt effected the insurance, but he refused to accept the bills; after some negotiation, the Plaintiff being the holder, signed a memorandum, by which after stating that the consignment had been made on account of the bills, and that the Hunts being apprehensive that the net proceeds might not be sufficient to discharge them had refused to accept, he accepted the bill of lading and policy, and undertook to apply the net proceeds, when in cash, as far as they would go to the credit of the Payee, in part payment of the bills; the Plaintiff afterwards sued the Hunts; and insisted that Rowland Hunt's agreement was an acceptance: but after a verdict for the Defendant, and time taken to consider, upon a rule to shew cause why there should not be a new trial, the whole court was clear that by the memorandum the Plaintiff had waived all right to insist on Rowland Hunt's agreement, for it was obvious that the whole consideration of the acceptance was the consignment, upon which there would be a commission, and the policy, and these the Plaintiff had taken to himself.

(*b*) *Ellis v. Galindo*, B. R. M. 24 G. III. cited Dougl. 250. note. James Galindo drew upon his brother for £30. in favour of the Plaintiff; when the bill became due James paid the Plaintiff £3. 15s. 4d. and indorsed a promise to pay the remainder in three months. Three years elapsed, and then the plaintiff sued the drawee upon his acceptance. Lord Mansfield thought the defendant discharged, and nonsuited the plaintiff. An applica-
tion

to say whether this is not a waiver of the acceptance, but it ought to be left to them with strong observations to shew that it is.

But a neglect to call upon an acceptor, or an indulgence to any of the other parties, though for ever so long a time, shall (a) not be considered as a waiver.

tion was made for a new trial, when Lord Mansfield said, he thought the case did not interfere with that of *Dingwall v. Dunster*, but a rule to shew cause was granted: after cause was shewn Lord Mansfield said, "the doubt is, whether the question should not have been left to the jury, it being a question of intention arising out of the circumstances." Willes J. thought it should have been left to the jury; and per Buller J. "I rather think the case should have gone to the jury; but I am not therefore of opinion that there ought to be a new trial; the indorsement could not have been meant as an additional security, for the Drawer was equally liable before. I should have left the question to the jury, but with very strong observations; and as the demand is so small, I do not think there ought to be a new trial." Rule discharged.

(a) *Dingwall v. Dunster*, Dougl. 235. 247. Dunster lent Wheate his acceptance, which became due 13th December 1774; it was then in the hands of Dingwall, but he finding that Wheate was the real debtor wrote to his attorney in February and November 1775 for payment, received interest upon the bill from Wheate, and suffered several years to elapse without calling on Dunster: on 13th February 1775, Dunster wrote to thank Dingwall for not proceeding against him, and said he had been informed by a person Dingwall had sent, that Wheate had taken up the bill; but Dingwall took no notice of this letter; he afterwards sued Dunster, for whom the jury found, but upon a rule to shew cause why there should not be a new trial, the whole court held that there was nothing in the Plaintiff's conduct to discharge Dunster; that it meant nothing more than an indulgence to him, and that he would try to recover from the drawer if he could; but by Lord Mansfield, no use has been made of the Defendant's letter; probably the fact did not warrant him in asserting that a person the Plaintiff sent had told him Wheate had taken up the bill; had the Plaintiff by any thing in his conduct, confirmed him in such a belief, it might have altered the case.

C A P. IV.

*Of the Presentment for Acceptance or Payment, and
Notice of a Non-acceptance or Non payment.*

THE Receipt of a Bill or Note implies an undertaking from the receiver to (a) every person who would be intitled to bring an action on paying it, to (b) present in proper time the one, where necessary, for acceptance, and each for payment, to (c) allow no extra time for payment, and to give (d) notice without delay to such person of a failure in the attempt to procure a proper acceptance or payment; and a (e) default in any of these respects will discharge such person from all responsibility on account of a non-acceptance or non-pay-

(a) Vide post p. 77. to p. 81.

(b) Vide post p. 59. to p. 65.

(c) Vide Tindal v. Brown, post p. 71. note (b)

(d) Vide post p. 70. to 78.

(e) Vide post p. 70. to 78.

Syderbottom v. Smith, Str. 649. In an action against the Indorser of a Note, Eyre C. J. of the Common Pleas directed the Jury to find for the Defendant, because the Plaintiff had not proved diligence to get the money from the Maker; being of the old opinion that the Indorser only warrants upon default of the maker.

Gee v. Brown, St. 792. The holder of an inland bill gave the acceptor time by intervals from 14th May when the Bill became due, to 7th June, and then sued the Drawer, but there being no notice to him, Eyre C. J. held the loss ought to fall on the Plaintiff.

ment, and make (a) the Bill or Note operate as a satisfaction of any debt or demand for which it was given.

The presentment is to be made where the Bill or Note is payable.

If the Drawee or Maker cannot be found at the place where the Bill or Note is payable, and it appears that he never lived there, or has (b) absconded, the Bill or Note is to be considered as dishonoured; if he has only removed, the holder (c) must endeavour to find out to what place he has removed, and make the presentment there.

If on a presentment it appears that the Drawee or Maker is dead, the holder (d) should enquire after

(a) By 3 and 4 Ann. c. 9. §. 7. It is enacted, that if any person doth accept any such bill of exchange, for and in satisfaction of any former debt, or sum of money formerly due unto him, the same shall be accounted and esteemed a full and compleat payment of such debt, if such person accepting of any such bill for his debt, doth not take his due course to obtain payment thereof, by endeavouring to get the same accepted and paid, and make his protest as aforesaid, either for non-acceptance, or non-payment thereof.

(b) Anon. Lord Raym. 743. "The custom of merchants is, that if B. upon whom a bill of exchange is drawn, absconds before the day of payment, the man to whom it is payable may protest it, to have better security for the payment, and to give notice to the Drawer of the absconding of B." Proved by merchants at Guildhall, Tr. 6 W. and M. before Treby, C. J.

(c) Collins v. Butler, Str. 1087. The maker of a note shut up his house before the note became due, and in an action against an Indorser, the question was, Whether the Plaintiff had shewn sufficient in proving that the house was shut up? and Lee, C. J. thought not; but that he should have given in evidence that he enquired after the maker, or attempted to find him out.

(d) Molloy, B. 2. c. 10. §. 34. "If a bill be accepted, and the party dies, yet there must be a demand made of his executors or administrators; and in default of payment, a protest must be made.

his

his personal representative, and if *he* lives within a reasonable distance, present the Bill or Note to him.

If a Bill or Note is made payable at a Banker's it is (*a*) sufficient to present it for payment at the Banker's, and if the Banker is himself the holder, it is (*a*) sufficient for him to see whether he has effects in hand.

A presentment should be made at a seasonable time.

If by the known custom of any place Bills and Notes are only payable within limited hours, a presentment *there* out of those hours is unreasonable.

And so is a presentment out of the hours of business to a person of a particular description in a place where by the known custom of that place all persons of his description begin and leave off business at stated hours.

A presentment for acceptance is not (*b*) necessary, except upon Bills payable within a limited time after sight.

(*a*) *Saunderson and others v. Judge*, 2. H. Bl. 509. A note made payable at the Plaintiff's was indorsed to them; when it became due, the maker having no effects in their hands, they wrote to one of the Indorsors to say it was not honoured, and afterwards brought an action against him; but it appearing that they had made no demand on the maker they were nonsuited; on shewing cause however against a rule for a new trial, the court held that it was sufficient to present the note where the maker made it payable, and as the persons at whose house it was made payable were themselves the holders, it was sufficient for them to refer to their books and see whether they had effects in hand, and a new trial was granted.

(*b*) *Molloy*, B. 2. c. 10. §. 16. "If a bill is drawn upon a merchant in London payable to I. S. at double usance, I. S. is not bound in strictness of law to procure an acceptance, but only to tender the bill when the money is due."

Beawes, §. 266. p. 453. "There is no obligation to procure acceptance

No (a) certain time is fixed within which this presentment must be made, but it should (b) be made within a reasonable time.

What shall be deemed a reasonable time (b) must depend upon the particular circumstances of each case, and it (b) must always be for the Jury to say whether there has been an improper delay.

No delay warranted by the common course of business is improper, nor is any delay which is occasioned by keeping the Bill in (b) circulation at a distance from the place where it is payable; but a delay by locking it up for any length of time (c) is.

If a Bill payable abroad at a certain time after sight is taken in a course of negotiation (d) it is not

“ to a bill payable at a day certain, as the time goes on whether accepted or not; but it is otherwise with bills payable at so many days sight.” See also Mar. 12, 13. and Blesard v. Hirst, and Goodall v. Dolley, post. p. 81 note (a)

Indeed in all cases where a bill is remitted to a factor or agent it may be his duty to apply for an acceptance, and he may be answerable for any loss his principal may suffer by a neglect; but this neglect does not affect the bill, if payable otherwise than after sight, nor the principal's right thereon. Vide Beawes, §. 49. p. 420. Mar. 12, 13.

(a) Per Eyre C. J. and Heath J. H. Bl. 569, 570.

(b) Per Eyre C. J. 2 H. Bl. 69.

(c) Per Buller J. 2 H. Bl. 170. See Muilman v. D'Eguino, infra note (d)

(d) Muilman v. D'Eguino, 2 H. Bl. 565. In debt on bond conditioned to pay certain bills drawn on India at 60 days after sight in case they should be returned protested, Defendant pleaded that they were not presented for acceptance within a reasonable time after the drawing; it appeared that they were drawn 5th March 1793, that they were indorsed on that day by Defendant to Plaintiffs, who procured them for a house at Paris; that Plaintiffs sent immediate advice to the house at Paris, and on receiving their directions on 30th April, sent them to India, where they arrived the 3d of October; on 5th October, the holder wrote to the Drawee who was
from

necessary to send it by the first opportunity to the place where it is payable.

If a Bill is payable in India 60 days after sight it is not necessarily a neglect to omit presenting it for acceptance for 26 days after its arrival.

from home, desiring him to accept the bills, and on 17th October, he sent an answer of refusal; some of the bills were thereupon protested 29th October, and the rest 18th November. Eyre C. J. left the case to the Jury, but told them he thought the bills had been sent to India in time, as they were put up here for negotiation, and were therefore liable to be delayed, and that they were presented in India in time after their arrival. The Jury found for the Plaintiff, and on a rule to shew cause why there should not be a new trial and cause shewn, the court was satisfied with the verdict, and Plaintiff had judgment. Eyre C. J. said, "It is not necessary to lay down any new rule as to bills of exchange payable at sight, or within a given time afterwards; if it were, I should feel great anxiety not to clog the negotiation of bills circumstanced like these. It would be a very serious and difficult thing to say, that a person paying a foreign bill, in the way these were bought, should be obliged to transmit it by the first opportunity to the place of its destination. There would also be a great difficulty in saying, *at what time* such a bill should be presented for acceptance. The courts have been very cautious in fixing any time for presenting for acceptance an inland bill payable at a certain period after sight, and it seems to me more necessary to be cautious, with respect to a foreign bill payable in that manner. I think indeed the holder is bound to present the bill in reasonable time, in order that the period may commence from which the payment is to take place; but the question what is reasonable time, must depend on the particular circumstances of the case; and it must always be for the Jury to determine whether any laches are imputable to the Plaintiff." Per Buller J. "The only rule I know of, which can be applied to the case of bills of exchange, is *that due diligence must be used*. Due diligence is the only thing to be looked at, whether the bill be foreign or inland, and whether it be payable at sight, at so many days after, or in any other manner. But I think a rule may thus far be laid down as to laches with regard to bills payable at sight, or a certain time after sight, namely, that they ought to be put in circulation; and if a bill drawn at three days sight were kept out in that way for a year, I cannot say there would be laches; but if instead of putting it in circulation, the holder were to lock it up for any length of time, I should say that he would be guilty of laches, but farther than this, no rule can be laid down." Per Heath J. "No rule can be laid down as to the time for presenting bills payable at sight, or at a given time afterwards. In the French ordinances of 1673, in Postlethwaite and Marius, it is said, "That a Bill payable at sight *or at will* is the same thing."

Upon a presentment for acceptance, the Bill should be left with the Drawee (*a*) twenty-four hours, unless in the interim he either accepts, or declares a resolution not to accept.

But a Bill or Note must not be left (unless it is paid) on a presentment for payment, if it be, the presentment is (*b*) not considered as made until the money is called for.

The time when a presentment for payment must be made, depends upon the time when the Bill or Note is payable.

A Bill or Note payable on demand, is payable immediately upon presentment, and a Bill payable at sight, is either payable immediately upon presentment, or (*c*) within the days of grace afterwards, and each must be presented within a reasonable time after the receipt, or put into a course of negotiation.

It does (*d*) not seem clear whether what shall be considered as a reasonable time is to be taken as a

(*a*) Vide Mar. 2d ed. 16. Mal. b. 3. c. 5. §, 1 Lord Raym. 281.

(*b*) Hayward v. Bank of England, Str. 550. Hayward kept cash at the Bank, and paid in a Banker's Note; the Runner to the Bank left it the next morning, and called for the money in the afternoon, but in the interval the Banker had stopped; and though this appeared to be the usual practice at the Bank, King C. J. said it was dangerous to suffer persons to deal with notes in that manner, and that the Common Pleas were of that opinion in the like case, and he directed the Jury to find for the Plaintiff, which they did, sed vide Turner v. Mead and Hoar v. Da Costa, post 63. note (*b*)

(*c*) See J'anfon v. Thomas, ante p. 24. note (*b*) and post. p. 66. note (*c*)

(*d*) See ante Muilman v. D'Eguino, p. 60 note (*d*) Tindall v. Brown, post p. 71, note (*b*). Appleton v. Sweetapple, post p. 65. note (*c*) Hankey v. Trotman, post p. 67 note (*d c*)

question of fact, for the determination of the Jury, or as a question of law for the determination of the court, and perhaps it may vary according to the occasion on which the Bill or Note was given, and the parties between whom the question arises.

Upon a Bill or Note payable on demand or at sight, and given for cash by a person who makes the profit by the money on such Bills or Notes a source of his livelihood, it is difficult to say what length of time such person shall be intitled to consider unreasonable; but upon such Bills or Notes given by way of payment, or paid into a banker's, any time beyond that which the common course of business warrants (*a*) is.

Upon a Bill or Note of this kind given by way of payment, the course of business seemed formerly to allow the party to keep it, if it was payable in the place where it was given, until the (*b*) morning of the

(*a*) See *Turner v. Mead*, *infra* note (*b*).

(*b*) *Ward v. Evans*, *Ld Raym.* 928. A banker's note was paid to the plaintiff's servant at noon, and presented for payment the next morning, at which time the Banker stopped payment. On a case reserved, the court held it was presented in time, and judgment was given for the plaintiff.

Moor v. Warren, *Str.* 415. The Defendant gave the Plaintiff a Banker's note at two o'clock in the afternoon, and he tendered it for payment the next morning at nine: the banker stopped a quarter of an hour before; and *Pratt C. J.* told the jury the loss should fall on the defendant, there being no laches in the plaintiff, who had demanded the money as soon as was usual in the course of dealing, and that keeping the note till next morning, could not be construed giving a new credit to the banker; and the jury found for the plaintiff. In *Holmes v. Barry*, *Str.* 415. the circumstances were the same, and *King C. J.* of the Common Pleas gave a similar direction, and the jury found accordingly.

Fletcher v. Sandys, *Str.* 1248. A Banker's note was paid to the Plaintiff after dinner, and he sent it for payment the next morning; but the Banker had

next day of business after it's receipt, and till the next post, if payable elsewhere, but (a) not longer.

had stopped payment; and Lee C. J. ruled that there were no laches in the Plaintiff, and that in all these cases there must be a reasonable time allowed, consistent with the nature of circulating paper credit.

Turner and others v. Mead, Str. 416. The defendants paid the sword blade company (the plaintiffs) two banker's notes at three o'clock in the afternoon, and the next morning their servant left them at the Banker's in order to call for the money in the evening, it then being the custom with the plaintiffs and the bank to send out their notes in the morning and to call for the money in the afternoon. The Plaintiffs' servant called for the money between four and five in the afternoon, and the banker had just stopped payment; and because the Plaintiffs had done nothing more than was usual in leaving the notes in the morning without taking the money, Pratt C. J. directed the Jury to find for them, which they did.

Hoar v. da Costa, Str. 910. The Defendant paid the Plaintiff a Banker's note at twelve; he put it into the Bank at one, and at ten the next morning the runner from the bank carried it with other notes, and left them, as was then usual, to call again for the money: he called at eleven, and was told the banker's servant was gone to the bank; he called again at two, when the banker said he was going to stop, and refused payment, but he paid small notes till four o'clock. The Defendant gave notice to the Plaintiff the next morning: the question was, whether this note was payment to the Plaintiff. It was insisted for the Defendant, that if the note had been tendered by itself it would have been paid; and for the Plaintiff, that if there had been no demand there would have been no laches, being within a day after the receipt. Raymond C. J. said there was no standing rule, and left it to the jury, who found for the Plaintiff.

(a) *Manwaring v. Harrison*, Str. 508. On Saturday the 17th of September, about two o'clock, Harrison gave Manwaring a Banker's note dated 5th September, and payable to Harrison or order on demand; Manwaring paid it away the same afternoon to J. S. and he presented it for payment on the Tuesday morning as soon as the shop was open; but the Banker stopped payment at that time. Manwaring paid the money to J. S. and brought this action to recover it from Harrison. Pratt C. J. left it to the jury, whether there had been any neglect; and observed, that as Harrison had kept it eleven days he probably would not have demanded payment sooner than J. S. did. The jury wished to leave it to the Court whether there had been a reasonable time; but the Chief Justice told them they were the judges of that; upon which they found for the Defendant, and gave it as their opinion, that a person who did not demand a Banker's note in two days took the credit on himself.

Thus where a note of this kind payable in London was given there in the morning, a presentment the next morning was held (*a*) sufficiently early: a presentment at two the next afternoon too (*b*) late.

But in (*c*) a very modern case, where a similar note was given in London at one, and not presented till the next morning, two juries held the delay unreasonable, but it was against the opinion of the Court.

A Bill or Note of this kind, given by way of payment to a banker, must (*d*) be presented by him as soon as if it had been paid into his hands by a customer.

A Bill or Note of this kind paid into a banker's, if payable at the place where the banker lives, must be presented the next time the banker's clerk goes (*e*) his rounds.

East India Company v. Chitty, Str. 1175. At half past eleven in the morning of the 18th of January, the Defendant paid the East India Company's Cashier a banker's note, and they did not send it for payment till the next day at two, at which time the banker stopped payment. The question was, Who should bear the loss? and upon examining the Merchants it was held, that the Company had made it their own by not sending it out the afternoon they received it, or at furthest the next morning; and the jury found accordingly for the defendant.

(*a*) *Ward v. Evans*, *Moore v. Warren*, *Holmes v. Barry*, *Fletcher v. Sandys*, *supra* p. 63. note (*b*).

(*b*) *East India Company v. Chitty*, *supra*.

(*c*) *Appleton v. Sweetapple*, B. R. M. 23 G. III. A Bill payable in London on demand was given to the plaintiff in London at one o'clock in the afternoon, and he did not present it till the next morning; the question was, Whether he presented it in time? Lord Mansfield left the point to the jury, who found for the Defendant; but the Court granted a new trial because the question was a matter of law upon which the Judge should have decided; the jury found again for the defendant, but against the Judge's direction; a second new trial was granted, and the jury again found for the Defendant; and then the Court refused to interfere.

(*d e*) *Hankey v. Trotman*, Black. 1. The Plaintiff was a Banker, and had a Bill on the Defendant, for which the Defendant paid him a draught upon

K

another

A (a) Bill or (b) Note importing to be payable within a limited time after a certain event, or (c) at sight, is not in fact payable until (d) two days after the expiration of that time, nor unless the third be a day of public rest until (d) three.

These

another banker at twelve at noon, and the Plaintiff got it marked for acceptance that night; before the next morning the banker on whom it was drawn stopped. The question was, Whether the Plaintiff or Defendant should bear the loss? The jury found a verdict for the Defendant, and upon a rule to shew cause why there should not be a new trial, and cause shewn, the Court^s (Wright J. dubitante) held that it was a question of fact, whether the Plaintiff had sufficient time for receiving the money, of which the jury were the proper judges, and the verdict stood.

(a) *Coleman v. Sayer*, 1 Barnard, B. R. In an action upon an Inland Bill payable six days after sight, one question was, Whether three days grace are allowed where a bill is payable at certain days after sight, as well as where it is payable upon sight? and Raymond C. J. said they were allowable in one case as well as in the other. Another question was, Whether they were allowable upon Inland as well as upon Foreign Bills? and the Common Serjeant and Foreman of the Jury said it was the constant practice in the city to allow them in both cases, upon which Raymond C. J. said he would not alter it; but the Plaintiff was nonsuited on another point.

(b) *Brown v. Harraden*, 4 Term Rep. 148. In an action on a note dated 13th September 1789, and payable 2d November, the declaration stated a presentment and refusal on the 2d of November. The Defendant pleaded a tender on the 5th, and the Plaintiff replied a Bill of Middlesex sued out the 4th; Rejoinder, that Defendant was not liable to pay the note at the time the Bill of Middlesex was sued out, and Surrejoinder that he was.—Demurrer and Joinder. The question, therefore, was, Whether three days grace were to be allowed on Promissory Notes? and after argument the court was unanimous that they were. The same point was taken for granted in *Smith v. Kendall*, ante p. 12. note (c). See *Dexlaux v. Hood*, Bull. Ni. Pr. 274, *Ward v. Honeywood*, Dougl. 62. *May v. Cooper*, Fort. 376.

(c) See *Coleman v. Sayer*, ante note (a), and in *J'anfon v. Thomas*, ante p. 24. note (b). Buller J. mentioned a case before Willes C. J. in London, in which a jury of Merchants was of opinion that the usual days of grace were to be allowed on bills payable at sight.

(d) *Taffell v. Lewis*, Lord Raym. 743. "In case of Foreign Bills of Exchange the custom is that three days are allowed for the payment of them, but if it happens that the last of the three days is a Sunday, or great holi-
" day

These extra days are called days of grace.

Different (a) countries vary in the number of days allowed by way of grace.

Upon the last day of grace, and within a reasonable time before the expiration of that day, a Bill or Note must be presented for payment.

But if the holder makes a second presentment on that day, the drawer or maker is (b) intitled to insist on paying it when such presentment is made, without paying the fees of noting or protesting, notwithstanding such presentment is made after the banking hours, and for the purpose of noting and protesting.

A presentment on the second day of grace, where the third is not a day of public rest, is a (c) nullity.

Upon a Bill payable within a limited time after sight, the time must be computed from its (d) presentment for acceptance; and upon a Bill or Note

“ day, as Christmas Day, &c. upon which no money used to be paid, there
 “ the party ought to demand the money upon the second day, otherwise it
 “ will be at his own peril. Merchants in evidence swore this to be the custom of merchants, and it was approved by Holt C. J. See also 2 Bl. Com. 469. Mar. 2d ed. 25.

(a) Beawes, §. 260. 1st ed. p. 449.

(b) Leftley v. Mills, post. p. 74. note (b)

(c) Wiffen v. Roberts, Espinasse 261. A Bill was dated 1st November 1793, and payable three months after date; in an action against the Drawer it appeared that the only presentment for payment was on the 3d of February which was only the second day of grace, and the day following was not a day of public rest; and Lord Kenyon held that the non-payment by the acceptor the day before the bill became regularly due, was not such a default in him as could authorise the holder to have recourse to the drawer, and the Plaintiff was nonsuited.

(d) Beawes, §. 252. 1st ed. p. 447. but Mar. 2d ed. p. 19. says from the day of acceptance only.

payable within a limited time after the date, where it has no date, from (a) the day it issued.

The calculation of the time depends upon the different modes of computing time.

All places with which we are in the habit of negotiating Bills, compute their time as we do (except that Russia adheres to the old style) by years reckoned in a series from the birth of our Saviour, and divided each into 12 months, and 365 (or in every fourth year 366) days.

Upon a Bill drawn at a place using one style, and payable at a place using the other, if the time is to be reckoned from the date it shall be computed according to the style of the place at which it was drawn, otherwise according to (b) the style of the place where it is payable; and in the former case the date (c) must be reduced or carried forward to the style of the place where the Bill is payable, and the time reckoned from thence.

Thus on a Bill dated the first of March, old style, and payable here one month after date, the time must be computed from the 19th of February, new style; and on a Bill dated the 19th of February, new style, and payable at Petersburg one month after date, from the first of March, old style.

(a) *Armitt v. Breame*, Lord Raym. 1076. An award which directed the removal of some scaffolds within 58 days from the date of the award, had no date, and an objection being taken upon this ground, the Court said that the time was to be computed from the *Delivery*.

(b) Vide Mar. 2d ed. p. 25. *Beawes*, §. 251. 1st ed. p. 447.

(c) Mar. 2d ed., p. 22.

Where

Where the time after the expiration of which a Bill or Note imports to be payable is limited by months, it is to be computed by (a) calendar, not lunar months.

Thus on a Bill or Note payable one month after date, and dated the first of January, the (b) month will not expire till the first of February.

Where the time is computed by days, the day on which the event happens is to be (c) excluded.

Thus on a Bill or Note payable ten days after date, dated the 1st of January, the time does not expire until the 11th.

Instead of an express limitation by years, months, or days, we continually find the time on Bills drawn or payable at Amsterdam, Rotterdam, Hamburg, Altona, Paris, or any place in France, Cadiz, Madrid, Bilboa, Leghorn, Genoa, or Venice, limited by *the usage*, that is, the usage between those places and this country; because, in the infancy of Bills, all Bills between this country and

(a) Mar. 2d ed. p. 19.

(b) Vide Mar. 2d ed. p. 24. Beawes, §. 253. 1st ed. p. 447.

(c) *Bellasis v. Hester*, Lord Raym. 280. Lutw. 1591. Upon a bill payable ten days after sight, Treby C. J. was of opinion that the day on which the bill was seen by the Drawee was not to be reckoned one of the ten, because then a bill payable one day after sight would be payable the day it was seen, but Powell and Neville Js. held the contrary, and judgment was given according to their opinion. However in *May v. Cooper*, Fort. 376. the court seemed to consider a note payable ten days after date, and dated the 21st July, as payable the 31st, (not allowing however any days of grace) and in *Coleman v. Sayer*. 1 Barnard, B. R. 303. In an action upon a bill payable six days after sight, one question was, whether the day of sight was to be reckoned one of the six, and Raymond C. J. said it was not, and the modern practice is conformable to his opinion.

any of those places respectively were usually made payable after the same interval.

An usance between this kingdom and Amsterdam, Rotterdam, Hamburg, Altona, Paris or any place in France, is one calendar month from the date of the Bill; an usance between us and Cadiz, Madrid, or Bilboa, two; an usance between us and Leghorn, Genoa, or Venice, three.

A double usance is double the accustomed time; an half usance, half.

Where it is necessary to divide a month upon an half usance, which is the case where the usance is either one month or three, the (a) division notwithstanding the difference in the length of months contains fifteen days.

The bankruptcy or known insolvency of the Drawee or Maker is no (b) excuse for a neglect to make a presentment, or to give notice.

Notice (c) must be given of a failure in the attempt to procure an acceptance, though the application for such acceptance might have been unnecessary.

(a) Mar. 2d ed. p. 23.

(b) In *Russel v. Langstaffe*, Dougl. 497. 515. Lee said *arguendo*, that it had frequently been ruled by Lord Mansfield at Guildhall, that it is not an excuse for not making a demand on a note or bill, or for not giving notice of non-payment, that the Drawer or acceptor has become a bankrupt, as many means may remain of obtaining payment by the assistance of friends, or otherwise, and Lord Mansfield who was in court, did not deny the assertion: this dictum was also referred to *arguendo* in *Bickerdike v. Bollman*, 1 Term Rep. 408.

(c) Vide *Blefard v. Hirst*, and *Goodall v. Dolley*, post p. 79. note (a)

So if the Drawee offer a partial or conditional acceptance, or an acceptance at an extended period, or if any other person offers an absolute one, though the holder may be willing to acquiesce in such acceptance, he must give notice.

In that case however, if he wishes to have the power of availing himself of it, he should mention in his notice the acceptance offered, for a notice generally of non-acceptance shews (a) he did not acquiesce in such offer.

A neglect to give notice upon the refusal of any thing more than a conditional acceptance, is done away by the completion of those conditions before the Bill becomes payable; and a neglect upon the refusal of any thing more than a partial acceptance, discharges the persons intitled to it only from their responsibility on account of the non-payment of the residue.

The notice must come from the holder, and though there is no prescribed form for it, ought to import that the holder looks on (b) the person to whom it is given as liable, and expects payment from him.

(a) Vide *Sproat v. Matthews*, ante p. 50. note (a).

(b) *Tindal v. Brown*, 1. T. R. 167. A note which became due 5th October, was presented at ten in the morning, and the maker not being at home, word was left for him where it lay; the holder sent again the 6th, when the maker promised to take it up within the banking hours, which were from 9 to 4; on the 7th, the holder sent again to the maker, and the note not being paid, gave notice to the Defendant who was an Indorser, but the Defendant said he had made it his own; the maker had told him on the 6th, that he could not pay it, and desired the Defendant would: all the parties lived at Bristol; the Jury found for the Plaintiff, but upon a rule to shew cause why there should not be a new trial and cause shewn, the court granted a new trial; Lord Mansfield said, "What is reasonable notice is a
" question

To give this notice, in the case of a foreign Bill, effect, it is (a) necessary that a minute of the non-acceptance

" question partly of fact, and partly of law ; it may depend in some
 " measure on facts ; such as the distance at which the parties live, the course
 " of the post, &c. but wherever a rule can be laid down with respect to this
 " reasonableness, *that* should be decided by the court, and adhered to for
 " the sake of certainty." Per Willes J. " New credit was given to the
 " maker, and I cannot consider notice from the maker equal to notice from
 " the holder." Ashurst J. " The reasonableness ought to be settled as a
 " question of law ; the next day at the most is as long as is necessary in a
 " case like this ; if the parties live at a small distance, this is a sufficient
 " time ; if at a greater, they should write by the next post. Notice means
 " something more than knowledge, because it is competent to the holder
 " to give credit to the maker : It is not enough to say that the maker does
 " not intend to pay, but that the holder does not intend to give credit ; the
 " party ought to know whether the holder intends to give credit to the
 " maker, or to resort to him." Per Buller J. " *When* the post goes out,
 " is a matter of fact ; when that is established, it is a matter of law, what
 " notice is reasonable ; as to giving time, the holder does it at his peril, and
 " and that is enough to decide the case ; the purpose of giving notice is to
 " let the party know that he is looked to for payment, that he may have his
 " remedy over by an early application ; if it shews that the holder has given
 " time, it discharges the party ; it ought to purport that the holder looks to
 " him for payment, and a notice from another person cannot be sufficient,
 " it must come from the holder." Upon the 2d trial there was contradictory
 evidence whether the notice from the maker was on the 6th or the 7th, and
 the jury found again for the Plaintiff, but the court said it was a verdict
 against law, and granted another new trial.

(a) Rogers v. Stephens, 2d Term Rep. 713. In an action against the Drawer of a foreign bill it appeared that the bill had been noted for non-acceptance, but there was no protest, and this was pressed as a ground for a non-suit. Lord Kenyon admitted the objection, but upon the other circumstances thought this a case in which a protest was not necessary. See post p. 78. note (d).

Gall v. Walsh, 5 Term Rep. 239. In an action against the Drawer of a foreign bill it was reserved as a point whether it was necessary to prove a protest ; and the court thought it so clear upon the motion to enter a non-suit, that they suggested to the Plaintiff's counsel the expediency of making the rule absolute in the first instance ; and upon their acquiescence it was accordingly done ; they afterwards however wished to have it opened, upon an

acceptance or non-payment, and a solemn declaration on the part of the holder against any loss to be sustained thereby, (which minute and declaration is called a protest) should be made out by a notary public, or if there be no such notary in or near the place where the Bill is payable, an inhabitant, in the presence of two witnesses; and that a copy, or some other memorial of it should accompany the notice. Such protest may also be made on the (a) non-accept-

an idea that the Drawer had no effects in the hands of the Drawee, but it appearing upon the report that that idea was not founded, the rule stood. And in *Brough v. Parkins*, Lord Raym. 993, 6 Mod 80. Salk. 131. Holt, C. J. says, "A protest on a foreign bill is part of the custom.

(a) By 3d and 4th Anne, c. 9. §. 4. Whereas by an act of parliament in the 9th year of the reign of his late majesty King William the III. intituled, "An act for the better payment of inland bills of exchange," it is among other things, enacted, 'that from and after presentation and acceptance of 'the said bill or bills of exchange, (which acceptance shall be by the under- 'writing the same under the party's hand so accepting, and after the ex- 'piration of three days after the said bill or bills shall become due, the party 'to whom the said bill or bills are made payable, his servant, agent, or 'assigns, may, and shall cause the same bill or bills to be protested in manner 'as in the said act is enacted; and whereas by there being no provision 'made therein for protesting such bill or bills, in case the party on whom 'the same are or shall be drawn refuse to accept the same, by underwriting 'the same under his hand, all merchants and others do refuse to underwrite 'such bill or bills, or make any other than a promissory acceptance, by 'which means the effect and good intent of the said act in that behalf is 'wholly evaded, and no bill or bills can be protested before or for want of 'such acceptance by underwriting the same as aforesaid;' it is enacted, that from and after the 1st day of May, 1705, in case, upon presenting of any such bill or bills of exchange, the party or parties, on whom the same shall be drawn, shall refuse to accept the same, by underwriting the same as aforesaid, the party to whom the said bill or bills are made payable, his servant, agent, or assigns, may and shall cause the said bill or bills to be protested for non-acceptance, as in case of foreign bills of exchange; for which protest there shall be paid two shillings, and no more.

tance of an inland Bill, if such Bill is for the payment of £5. or upwards within a limited time after date and the value is expressed therein to have been received, or (a) after an acceptance written on such a Bill, for its non payment.

But a (b) protest cannot properly be made on any other inland Bills.

(a) By 9th and 10th William III. c. 17. §. 1. "Whereas great damages and other inconveniencies do frequently happen in the course of trade and commerce, by reason of delays of payment and other neglects on inland bills of exchange in this kingdom;" it is enacted that from and after the 24th day of June 1698, all and every bill or bills of exchange drawn in, or dated at and from any trading city or town, or any other place in the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, of the sum of £5. sterling or upwards, upon any person or persons of or in London, or any other trading city, town, or any other place (in which said bill or bills of exchange shall be acknowledged and expressed the said value to be received) and is and shall be drawn payable at a certain number of days, weeks, or months after date thereof, that from and after presentation and acceptance of the said bill or bills of exchange, (which acceptance shall be by the underwriting the same under the party's hand so accepting) and after the expiration of three days after the said bill or bills shall become due, the parties to whom the said bill or bills are made payable, his servant, agent, or assigns, may and shall cause the said bill or bills to be protested by a Notary Publick, and in default of such Notary Publick, by any other substantial person of the city, town, or place, in the presence of two or more credible witnesses, refusal or neglect being first made of due payment of the same; which protest shall be made and written under a fair written copy of the said bill of exchange, in the words or form following.

Know all Men, that I, A B. on the day of at the usual
place of abode of the said have demanded payment of the bill, of
the which the above is the copy, which the said did not pay,
wherefore I the said do hereby protest the said bill:
Dated this day of

(b) *Lestley v. Mills*, 4 Term Rep. 170. An inland bill for £20. 7s. payable 14 days after sight, became due 24th April 1790. A Banker's clerk called with it for payment in the morning, and the acceptor not being at home, left word where it lay; after six another of the clerks who was a notary noted it, and between seven and eight the first clerk went with it again; the acceptor tendered him the amount of the bill, and six-pence over,
but

And a protest upon an Inland Bill is never necessary where (a) the Bill is for the payment of less than £20. and on such as are for the payment of more, a neglect to procure it (b) only precludes the

but he insisted on 2s. 6d. for the noting, and *that* sum not being paid, an action was brought against the acceptor, who pleaded the tender. Lord Kenyon thought a tender of the amount of the bill at any time of the day it was payable was sufficient, upon which the jury found a verdict for the Defendant. A rule to shew cause why there should not be a new trial was afterwards granted, and upon cause shewn Lord Kenyon thought the acceptor had till the last minute of the day of grace to pay the bill, and that it could not be noted or protested till the following day. Buller J. thought they were payable any time of the last day of grace upon demand, so as such demand was made within reasonable hours; and that they might be protested on that day. Grose J. declined giving any opinion on these points; but the whole court concurred, that the bill in question could not be noted, because it was payable within a limited time after sight, and the statute authorises the noting of such inland bills only, as are payable after date. Lord Kenyon also thought that the six-pence tendered was sufficient for the noting, and the rule was discharged.

(a) By 3d and 4th, Anne c. 9. §. 6. It is provided, that no such protest shall be necessary, either for non-acceptance or non-payment of any inland bill of exchange, unless the value be acknowledged and expressed in such bill to be received, and unless such bill be drawn for the payment of £20. sterling or upwards; and that the protest, hereby required for non-acceptance, shall be made by such persons as are appointed by the act of 9 and 10 W. III. c. 17. to protest inland bills of exchange for non-payment thereof.

(b) Brough v. Parkins, Lord Raym. 992. 6 Mod. 80. Salk. 131. In an action against the drawer of an inland bill, it was insisted upon for error, that it did not appear by the declaration, that the bill had been protested; sed per Holt C. J. "on an inland bill no protest was necessary by the common law
" and the statute does not destroy or take away the party's action where there,
" is no protest: nor is the want of a protest any bar of the action: but the act
" seems only to take away from the Plaintiff his interest and damages, where
" he has not made a protest, or to give the Drawer a remedy against him by
" way of action for their costs and damages"—and the judgment was affirmed.

Harris v. Benson, Str. 910. In an action against the Drawer of an inland Bill after an acceptance, Raymond C. J. ruled that for want of a protest according to 9 and 10. W. III. c. 17. the Drawer could not be charged with

holder from recovering against the persons intitled to notice and special damages or costs occasioned by the non-acceptance or non-payment, and interest.

A protest may (a) also be made on the non-payment of Coal Notes given pursuant to 3 G. II. c. 26. §. 7.

To such of the parties as reside in the place where the presentment was made, the notice must be given at the farthest, by the expiration of the (b) day

interest. In *Lumley v. Palmer*, Ann. 78. Lord Hardwicke says, " At common law there was no way to charge the Drawer of an inland bill with interest and costs after a protest; and therefore the first act was made that after acceptance by underwriting, these bills might be protested for non-payment, and that thereon interest and charges should be paid by the Drawer from the time of the protest, the statute does not say the original sum, for that is recoverable without protests; but interest and charges."

(a) By 3d Geo. II. c. 26. §. 7. Be it enacted, that from and after the 24th day of June, 1730, all lightermen and other buyers of, or contractors for coals on board of any ship or vessel in the port of London, shall at the time of the delivery of such coals, either pay for the same in ready money, or for such part thereof as shall not be so paid for, shall give their respective promissory notes or notes of their hands for payment thereof, expressing therein the words *value received in coals*, payable at such day, or days, time or times, as shall for that purpose be agreed upon between such lighterman or other buyer of or contractor for coals, and the master or owner of such ship or vessel, or his agent or factor on his behalf; and that all such notes, in case of non-payment at the respective days and times therein mentioned, shall and may be protested or noted in such manner as inland bills of exchange may now be; and in default of such protesting or noting by any Indorsee, and notice thereof given by such Indorsee to the respective Indorser or Indorsers, within twenty days after such failure of payment, such respective Indorser or Indorsers, to whom such notice shall not be given, shall not be chargeable with or liable to answer or pay such sum of money, as shall be mentioned to be payable in or by such note or notes, nor any part thereof, any law, usage or custom to the contrary thereof notwithstanding.

(b) *Tindall v. Brown*, ante p. 71. note (b) *Muilman v. D'Eguino*, ante p. 60. note (d) infra p. 77. note (c)

following

following the failure ; to those who reside elsewhere, by (a) the next post.

Sending (b) notice by the post is sufficient ; though it is not received, and where there is no post, it is sufficient to send by the ordinary mode of conveyance.

Therefore in the case of a foreign Bill it (c) is sufficient to send it by the first regular ship bound for the place to which it is to be sent ; and (c) it is no objection, that if sent by a ship bound elsewhere, it would by accident have arrived sooner, though the holder wrote other letters by that ship to the place to which the notice was to be sent.

The (d) Drawer of a Bill, and (where the acceptance appoints the payment to be made else-

(a) Malynes, B. 3. c. 6. §. 1. 1st ed. p. 265. Mar. 2d. ed. p. 24.

(b) *Saunderson v. Judge*, ante p. 59, note (a) The holder of a note wrote to the Defendant who was one of the Indorsers to say it was dishonoured, and put the letter in the post, but there was no evidence that it ever reached the Defendant, and the court held that sending the letter by the post was quite sufficient.

(c) *Muilman v. D'Eguino*, ante p. 60, note (d) To debt on bond conditioned to pay certain bills drawn on India at 60 days sight in case they should be returned protested, Defendant pleaded that he had not notice so soon as he should have had ; it appeared that notice was sent by the first English ships, but that by the accidental conveyance of a foreign ship not bound for England, and by which the holder wrote to England upon other matters, notice might have been sent sooner, and would have arrived sooner ; but Eyre C. J. told the jury that notice by the first regular ships bound for England was sufficient, and that it was not necessary to send notice by the chance conveyance of a foreign ship : the jury found for the Plaintiff, and the court was satisfied with the verdict, and refused a new trial.

(d) Vide *Bickerdike v. Bolman* infra p. 80, note (a) and *Rogers v. Stephens*, infra p. 78, note (d).

where

where than at the acceptor's house) the (a) acceptor, and every person who transfers a Bill or Note is, *primâ facie*, to be presumed intitled to bring an action on paying it, and therefore intitled to insist on a want of notice, or on a neglect to make a proper presentment, but the (b) contrary may be proved.

Payment of (c) part, or (d) a promise to pay after full notice of the default, sufficiently evinces

(a) *Bishop v. Chitty*, Str. 1195. Chitty the Drawee of a bill wrote upon it by way of acceptance, "Messrs. Caswell and Mount pay this bill when due for Thomas Chitty;" it became due 2d January 1741, Caswell and Mount paid till the 19th, when they stopped, and no notice was given to Chitty of its non-payment till the 21st—and Lee C. J. held that Chitty was discharged, for though the holder might have refused this acceptance, he had agreed to it, and it was in nature of a draught, which is considered as payment when a reasonable time to receive it in has elapsed. However in *Smith v. De la Fontaine* B. R. T. 25. G. III. Where an action was brought against the acceptor of a bill upon an acceptance to pay at his banker's, and the Plaintiff could not prove an acceptance at the banker's, notwithstanding which the jury found for him; the court held the proof unnecessary, and refused to grant a new trial. *Bishop v. Chitty*, was cited.

(b) *Bickerdike v. Bolman*, *infra* p. 80. note (a) *Rogers v. Stephens*, *infra* note (d) and *Goodall v. Dolley*, *infra* p. 80. note.

(c) *Vaughan v. Fuller*, Str. 1246. Was an action against the Indorser of a note, and it being proved that the Defendant had paid part, Lee C. J. held that *that* made the proof of a demand upon the maker unnecessary.

(d) *Rogers v. Stephens*, 2 Term Rep. 713. In an action against the Drawer of a foreign bill an objection was taken that there was no protest; but it appearing that the Defendant had no effects in the hands of the Drawees when the bill was drawn or afterwards, and that on being pressed for payment by the Plaintiff's agent after the bill was dishonoured he had said, it must be paid, Lord Kenyon thought a protest or notice unnecessary, and directed the jury to find for the Plaintiff, which they did: a rule was afterwards granted to shew cause why there should not be a new trial, and it was stated *then*, and upon the shewing cause that the Defendant had really been prejudiced by the want of notice to the amount of the bill, that he had advanced money to one Calvert to the amount before the bill was drawn, that Calvert desired him to draw on the Drawees as Calvert's agents, that

he

the contrary; a payment or promise without such notice does (a) not.

he did so on a supposition, that Calvert had effects in their hands, that he afterwards settled with Calvert, and upon a reliance that the bill was paid delivered him up effects to more than the value of the bill, and that Calvert was since insolvent; that the Defendant was prepared with evidence to this effect, but that Lord Kenyon delivered it as his opinion that it did not make a protest or notice necessary; Lord Kenyon did not recollect that this evidence was offered, but he and all the court thought it answered by the Defendant's admission that the bill must be paid, because that was an admission that the Plaintiff had a resort to him upon the bill, and that he had received no damage by the want of notice, and was a promise to pay. The rule was discharged.

Anson v. Bailey, Bull. Nisi. Prius, 276. The indorsee of a note presented it for payment, but the maker pretended that the Payee had promised not to indorse it over without acquainting him, and so put off the Indorsee from time to time for three weeks; at the end of that period the Indorsee wrote twice to the Payee, stating what he had done, and the maker's excuse; the Payee answered that when he came to town he would set the matter right; and upon an action by the Indorsee against the Payee, the jury found for the Plaintiff, though the maker became bankrupt before the second letter was written, and though he continued solvent for three weeks after the note was due.

Wilkes v. Jacks, Peake 202. In an action against Jacks as indorser of a bill drawn by Vaughan on Eustace and Holland, it appeared that notice had not been given to the Defendant, upon which the Plaintiff offered to shew that Vaughan had no effects in the hands of Eustace and Holland; sed per Ld Kenyon, "That circumstance will not avail Plaintiff; the rule extends only to actions brought against the drawer; the indorser is in all cases intitled to notice, for he has no concern with the accounts between the drawer and the drawee." The Plaintiff then proved a letter from the Defendant acknowledging the debt, and promising to pay, and upon that he had a verdict.

(a) Blesard v. Hurst and another, Burr. 2670. The Defendants indorsed a Bill to the Plaintiff, and he indorsed it over; his indorsee presented it for acceptance a month before it was due, and acceptance was refused; it was afterwards presented for payment, and payment was refused, of which notice was given to the Defendants, but they had no notice of the refusal to accept. The drawer was a Bankrupt before the bill was due, but he continued in credit three weeks after the presentment for acceptance. Three days after the notice one of the Defendants called on the Plaintiff at Bradford, on his way to Leeds, and said he would take up the bill as he returned; but on his return he said he was advised he was not bound to do it, upon which this action

was

Proof that the drawer had no effects in the hands of the drawee from the time the Bill was drawn until it became payable is (a) sufficient, at least *primâ facie*, to shew, that the drawer would be intitled to bring

was brought; and on a case reserved the Court held, that though the holder might not have been obliged to present the bill for acceptance, yet as he did he ought to have given notice of the refusal, and that by not doing so he had taken the risque upon himself, and notwithstanding the promise of one of them the Defendants had judgment.

Goodall v. Dolley, 1 Term Rep. 712. A Bill drawn in favour of the Defendant, payable the 11th of January 1787, was presented for acceptance by the Plaintiffs the 8th of November 1786, when acceptance was refused: they gave no notice to the Defendant till the 6th of January, and then did not say when the bill was presented; upon which the Defendant proposed paying by instalments, but the Plaintiffs rejected that offer, and brought this action. Heath J. thought the Defendant discharged for want of notice, and that his offer to pay being made under an ignorance of the circumstances was not binding, and the jury, under his direction, found a verdict for the Defendant. Upon cause shewn against a rule for a new trial, the court thought the direction and verdict right, and discharged the rule.

(n) *Rogers v. Stephens*, ante p. 78. note (d)

Bickerdike and another, assignees of *Reichard*, v. *Bollman*, 1 Term Rep. 405. The only question upon a case reserved was, Whether a bill the Bankrupt had drawn in favour of the petitioning creditor, upon a man who then, and from that time till the bill became due, was one of the Bankrupt's creditors, had discharged so much of the petitioning creditor's debt; no notice having been given of it's dishonour to the Bankrupt? and the Court, after argument, were of opinion it had not, because the reason why notice is in general necessary, is that the drawer may without delay withdraw his effects from the drawee, and that no injury may happen to him from the want of notice; but where the drawer has no effects in the hands of the drawee he cannot be injured, and is not intitled to any notice.

Goodall v. Dolley, supra. In this case upon the application for a new trial, the Plaintiff's Counsel offered an affidavit that the drawer had no effects in the hands of the drawee, but the Court thought *that* made no difference, the action being brought against the payee; but by Buller J. "Had the action been against the drawer I should have been willing to let in the affidavit; that would be like the case of *Bickerdike v. Bollman*; if the drawer has no effects in the hands of the drawee he cannot be injured by want of notice."

no action on paying the Bill, and has therefore no right to insist on the want of notice, &c. and it (a) has been doubted whether the drawer would be at liberty to shew the contrary.

But proof that the drawer had no effects in the hands of the drawee is no (b) evidence that the payee, or any of the indorsers could not have brought an action on paying the Bill, and therefore does not excuse the want of notice, &c. to them.

If the payee of a Note lends his name merely to give it credit, and to enable the maker to raise money upon it, and knows at the time that the maker is insolvent, he (c) is not intitled to notice, nor (c) is it

(a) In *Rogers v. Stephens*, ante p. 78. note (d). Mr. J. Ashurst said, "Admitting the proof offered had been given, I do not think it clear it would take the case out of the common rule; for the law being now established, that notice to the drawer of a non-acceptance is not necessary where he has no effects in the hands of the drawee; when the Plaintiff found the drawees of this bill had none of the Defendant's effects in their hands, he knew he was not bound by law to give the Defendant notice; he was not bound to take cognizance of any private transaction between the drawer and a third person not appearing on the face of the bill."

(b) *Goodall v. Dolley*, supra p. 79. note (a) p. 80. *Wilkes v. Jacks*, supra p. 78. note (d).

(c) *De Bert v. Atkinson*, 2 H. Bl. 336. In an action against the payee of a note it appeared that the note was not presented for payment till the day after it became due, and that no notice was given to the Defendant till five days after such presentment; but it also appearing that the Defendant gave no value for the note, that he lent his name merely to give it credit, and that he knew at the time that the maker was insolvent, Eyre C. J. directed the jury to find for the Plaintiff, which they did. A rule to shew cause why there should not be a new trial was afterwards granted, and upon cause shewn, per Eyre, C. J. "If the maker is not known to be insolvent insolvency will not excuse the want of an early demand; but knowledge excludes all presumption, which would otherwise arise; here the money was to be raised upon the Defendant's credit; he meant to guarantee the payment, and no loss could happen to him from the want of notice." And per Buller J. "The general rule is only applicable to fair transactions, where the Bill or Note has been given for value in the ordinary course of trade,

any defence for him that the Note was not properly presented for payment.

So if the payee lends his name to secure a composition from the drawer to a creditor, and takes effects of the drawer to answer it (*a*), he is not intitled to notice, &c.

But it is (*b*) no excuse for not having presented a Note in time for payment, &c. that the Defendant indorsed it to guarantee a debt from the maker, or that the Defendant knew before it was due, that the maker could not pay it, and had desired a banker at whose house it was made payable, to send it to him and he would pay it.

Nor

“ it is said insolvency does not take away the necessity of notice ; that is true
 “ where value has been given, but no further ; here the Defendant lent his
 “ name merely to give credit to the note, and was not an indorser in the
 “ common course of business.” Heath and Rooke Js. concurring the rule was discharged.

(*a*) *Corney v. Da Costa, Espinasse* 302. Da Costa & Co. compounded with their creditors, and to secure the composition drew notes in favour of the Defendant, which he indorsed to the creditors. The Defendant took effects of Da Costa & Co. at the time, to the amount of the composition ; and an action being brought against him upon one of these indorsements, he insisted that he had no notice of the non-payment of the note until five weeks after it was due ; but Buller J. held he was not entitled to notice, and the Plaintiff had a verdict.

(*b*) *Nicholson v. Gouthit, 2 H. Bl. 609.* Gouthit and Burton undertook to guarantee an instalment on the debts of Greens, and for that purpose Greens drew notes payable to Gouthit at Drury & Co.'s which Gouthit and Burton indorsed, after which they were delivered to the creditors. Before they became due Gouthit enquired at Drury and Co.'s if they had any effects, and on their saying they had not, he desired them to send the notes to him, and he would pay them ; many notes were accordingly presented and paid, but the note in question not being presented till three days after it was due, Gouthit refused to pay it. Burton had supplied him with money to take up all the notes, but as this was not presented when due, he had returned the money desired to pay it. An action was brought against Gouthit, and upon the trial

Eyre

Nor (a) is it any excuse for not giving notice, &c. to the drawer of a Bill, if he had effects in the hands of the drawee, that the drawee represented to the drawer when the Bill was drawn, that he should not be able to provide for it, and that the drawer thereby understood that he should have to provide for it.

A notice from the holder, or any other person who may have a right of action upon the Bill, may perhaps enure to the benefit of all the antecedent parties, and make an additional notice from any of those parties unnecessary.

But it is adviseable for each party, immediately upon the receipt of notice, to give a fresh one to such of those persons who are liable over to him, against whom he must prove notice.

Eyre C. J. thought as he knew the note would not be paid at Drury & Co.'s and had provided money for it, and as his indorsement was by way of guarantee, he was not injured by the delay; and that the request to send the notes to him was either a waiver of notice, or notice by anticipation; but on a rule nisi to enter a nonsuit, and cause shewn, though he thought the justice was clearly with the Plaintiff, he thought he could not recover, for though the indorsement was by way of guarantee it was liable to all the legal consequences of an indorsement, and Gouthit's promise to pay was only to pay such as should be duly presented at Drury's. Heath & Rooke Js. were of the same opinion, and the rule was made absolute.

(a) *Staples v. Okines*, Espinasse 332. In an action against the drawer of a bill the defence was want of notice; the Plaintiff thereupon called the acceptor, who proved that when the bill was drawn he was indebted to the Defendant in more than the amount of the bill, but that he then represented to the Defendant that it would not be in his power to provide for the bill when it should become due, and that it was therefore then understood between them, that the Defendant should provide for it, and it was contended that this superseded the necessity of giving the Defendant notice; but Lord Kenyon held it did not, and nonsuited the Plaintiff.

C A P. V.

Non-acceptance or Non-payment. Remedy inde.

UPON a non-acceptance or non-payment, the holder of a Bill or Note may sue all the persons liable to him on account of such non-acceptance or non-payment, either at the same time or successively.

An Indorser, an Acceptor for the honour of an Indorser or Drawer, or the (a) Drawer, is after

(a) *Louviere v. Laubray*, 10 Mod. 36. The Plaintiff drew a bill upon the Defendant, which the Defendant accepted, but afterwards refused to pay; upon this the bill was indorsed to the Plaintiff, and the question was, Whether he could maintain an action as Indorsee? and per Parker C. J. upon evidence that he had effects in the hands of the Defendant enough to answer the bill, and consequently that the acceptance was not upon the honour of the Plaintiff, the action is well brought, but if there were no effects, the action would not lie; and the Plaintiff recovered.

Symonds v. Parminter, 1 Wils. 185. 4 Bro. Parl. Cas. 604. The Plaintiff drew a bill upon the Defendant to the order of Cleer and Co. which the Defendant accepted, but did not pay; the Plaintiff paid it, and brought this action. The declaration stated that the Plaintiff drew the bill, that the Defendant accepted it, but did not pay it, that the Plaintiff became liable, and paid it, by reason whereof the Defendant became liable, and promised. The Defendant demurred, and afterwards moved in arrest of judgment, and contended that the action would not lie, but the court after two arguments upon the demurrer, and one on the motion in arrest of judgment were of opinion that it would, and judgment was given for the Plaintiff. The Defendant brought a writ of error in Parliament, but did not appear at the bar to support it, and the judgment was affirmed.

payment

payment by him, holder; but he holds in his original capacity, not (a) as upon a transfer from the person he has paid.

So the bail of any of the parties who are sued, or (b) any persons who pay the Bill or Note on account of any of the parties, become, on payment, holders; and they hold as upon a transfer from the person for whom they made the payment, not (c) as upon a transfer from the person they have paid.

An action (d) may be brought upon a non-acceptance before the expiration of the time limited by a Bill for its payment.

(a) *Bishop v. Hayward*, 4 Term Rep. 470. The Plaintiff declared upon a note payable to himself or order, indorsed by him to the Defendant, and by the Defendant indorsed back again to him; and obtained a verdict; a rule was granted to shew cause why the judgment should not be arrested, on the ground that according to the statement in the declaration the Plaintiff would be liable upon his indorsement to pay the Defendant the sum for which the verdict was given; and upon cause shewn, the court held the objection good, because as the Plaintiff had not stated it to be otherwise, his indorsement was to be considered as a legal existing indorsement: had any circumstances existed which exempted the Plaintiff from answering upon his indorsement to the Defendant, they should have been disclosed on the record. And see *Louviere v. Laubray*, ante p. 84. note (a)

(b) *Mertens v. Winnington*, *Espinasse* 112. A bill was drawn by the Defendant, and indorsed by Burton, Forbes and Gregory; the Plaintiff paid it for the honour of Burton, Forbes and Gregory, and brought this action against the Defendant as Drawer; the Defendant contended that a person who paid for the honour of one of the parties could only sue that party; but Lord Kenyon said, "he was to be considered as an Indorsee paying full value for the bill," and he directed the jury to find for the Plaintiff.

(c) *Hall v. Pitfield*, B. R. H. 17. G. II. The Indorsee of a note sued the maker, and on payment by his bail permitted them to sue the indorser in his (the Indorsee's name) but the court held that the payment by the bail discharged the Indorser, and that the action could not be maintained.

(d) *Bright v. Purrier*, Bull. Ni. Pr. 269. A foreign bill payable 120 days after sight was presented for acceptance, but acceptance being refused,

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All the antecedent parties are liable to the holder on account of a non-acceptance or non-payment, and if the Bill or Note was transferred to him for a precedent consideration by delivery, the person who delivered it is also liable.

If the holder sues all the persons liable at the same time, it has been (a) supposed that the court or a Judge would not stay proceedings in any one action but upon payment of the money recoverable in that, and the costs in such of the rest in which judgment has not been obtained, but it has been (b) recently decided in the case of a Bill, that the acceptor is the only person against whom the Plaintiff is intitled to

the holder brought an action immediately against the drawer; the Defendant objected that he was not liable till the expiration of the 120 days, and offered to call witnesses to prove that such was the custom of merchants; but Lord Mansfield said the law was clearly otherwise, and refused to hear the evidence; so the Plaintiff recovered.

Milford v. Mayor, Dougl. 55. The Defendant drew a bill of exchange which the Drawee refused to accept, upon which the Plaintiff arrested him before the bill became due; these facts appearing upon the affidavit to hold to bail, a rule was obtained to shew cause why the Defendant should not be discharged; but upon shewing cause, Buller J. said, "it is settled that if a bill is not accepted, an action will lie immediately against the Drawer, because his undertaking that the Drawee shall give him credit is not performed; there have been many actions of this sort;" and Willes and Ashurst Js. concurring, the rule was discharged.

(a) Golding v. Grace, Blackst. 749. The Indorser of a bill obtained a rule nisi to stay proceedings on payment of the debt and the costs of the writ, the Plaintiff insisted that he was intitled to be paid for drawing declarations against the Defendant and the Drawer; and it was agreed, that if any was to be paid for, the Plaintiff was intitled to be paid for both, but the court held that the application to pay debt and costs was made so early, that the Plaintiff was only intitled to the costs of the writ.

(b) Smith v. Woodcock, Same v. Dudley, 4 Term Rep. 691. The holder of a bill brought actions against the acceptor, the drawer, and two indorsers; the Drawer and one of the Indorsers obtained a rule nisi to stay proceedings

the costs of *all* the actions, and that each of the other parties is intitled to a stay of proceedings upon paying the debt and the costs in the action against him.

But though he may recover judgments in all the actions, he (*a*) can only once recover the sum payable by the Bill or Note, and the costs, and if he rejects a tender of such sum and costs, the (*b*) court will make an order to restrain him from taking out execution.

If the holder at first sue some only of the persons liable, he may at any time before satisfaction sue all or any of the rest.

Obtaining (*c*) a judgment is no satisfaction, even as to the parties subsequent to him against whom the judgment is obtained.

proceedings against them on payment of the bill and the costs of the actions against *them*: the Plaintiff insisted that the costs of the other actions should be also paid: sed per cur. "that is only necessary where the application comes from the acceptor, who is the original defaulter, and against whom all the costs occasioned by his default may be recovered." Rule absolute.

(*a*) *Ex parte Wildman*, 2 Vez. 115. per Lord Hardwicke, "In cases of bills of exchange or promissory notes, where there is a Drawer and Indorser, perhaps more than one judgment is against all, but there can be but one satisfaction.

(*b*) *Windham v. Withers*, Str. 515. The Plaintiff having obtained judgments against the Drawer and Indorser of a note, the principal in one, and the costs in both were offered him, which he refused; and the court granted a rule to restrain him from taking out execution, and intimated that they would have punished him, had he taken out execution upon both judgments.

(*c*) *Claxton v. Swift*, 2. Show. 441, 494. Lutw. 882. To an action against the Indorser of a bill, the Defendant pleaded that the Plaintiff had recovered a judgment against the Drawer, and that the judgment was still in force, and upon demurrer the court of King's Bench held the plea good, but the court of Exchequer Chamber held otherwise, and the judgment was reversed.

And

And (a) the actual taking of a man in execution, and discharging him upon a Letter of Licence, is no satisfaction as to any of the antecedent parties.

Nor (b) is it a satisfaction, that one of the parties has been charged in execution on the Bill or Note and discharged as an insolvent, unless as to the party at whose suit he was so charged.

Receiving dividends under a commission of Bankruptcy is a satisfaction pro tanto only.

If more than one of the persons liable on account of the non-acceptance or non-payment of a Bill or Note become bankrupts, the holder may prove, under the separate commission of each, the full (c)

(a) *Hayling v. Mulhall*, Blackst. 1235. A bill was indorsed by Sheridan to Boon, and by him to the Plaintiff; he sued Boon, and took him in execution, but discharged him upon a letter of Licence, he then sued Sheridan, for whom the Defendant became bail, and upon an action against the Defendant he contended that the debt was satisfied by the imprisonment of Boon, but the court was clear it was not, and Mulhall was obliged to pay the money.

(b) *M'Donald v. Bovington*, 4 Term Rep. 825. A bill drawn by M'Donald on Bovington, was indorsed to Thompson, who charged Bovington in execution upon it; Bovington was discharged as an insolvent, and then Thompson sued M'Donald and recovered.—M'Donald paid the bill, sued Bovington, and charged him in execution; and on a rule nisi to discharge him, and cause shewn, it was urged that Bovington had satisfied the bill by being charged in execution at the suit of Thompson.—Sed per Lord Kenyon, nothing can be clearer than that he has not; it was a mere formal satisfaction as to Thompson, not like actual payment; and when M'Donald was obliged to pay the bill, a new cause of action arose against the Defendant by the payment without regard to what passed in the former action; and per Buller J. the consequence would be that because the Drawer was obliged to pay the holder, the acceptor would be discharged without paying either. Rule discharged.

(c) *Ex parte Wildman*, 1. Atk. 109. 2 Vez. 113. Wildman held bills drawn by Buckle and accepted by Vanhylik; Vanhylik failed and made a composition with his creditors, and Buckle became bankrupt. Wildman having received nothing under Vanhylik's composition, proved his whole debt

amount of the money due to him upon the Bill or Note at the time he makes his proof, and receive dividends under each upon the sums proved, until he shall in the whole have received such amount.

But after the receipt of a dividend under one commission, he (a) cannot prove under any of the rest more than the sum remaining due after deducting such dividend.

debt under Buckle's commission, but before any dividend was made he received 2s. 6d. in the pound out of Vanhylik's estate : Buckle's assignees then contended that he ought to deduct the 2s. 6d. in the pound out of his proof, and take a dividend upon the balance only : But Lord Hardwicke held that as the whole sum was due when he proved his debt, and the dividend and composition would not amount to 20s. in the pound upon his debt, he was intitled to a dividend upon his whole debt ; and per Lord Hardwicke, " In cases of bills or notes, where there is a Drawer, and perhaps several Indorsers, suppose two of these persons become bankrupts, the holder may prove his *whole debt* under each commission, and is intitled to receive satisfaction out of both estates, according to the dividends to be made, until he has received satisfaction for his whole debt ; for he has a double security, and it is neither law or equity to take it from him : but if before the bankruptcy of one he had received payment of part from the other, he could only have proved the residue under the latter bankruptcy, as the form of proving his debt shews, because no more would remain due to him." To the same effect are the cases of *ex parte Royd* and *ex parte Bennett*, cited 2 Vez. 114.

And see Cooke's Bankrupt Laws, 170.

(a) See *ex parte Wildman*, ante p. 88. note (c).

Cooper v. Pepys, 1 Atk. 106. The holders of notes drawn by Reeves, and payable to Andree, accepted 6s. in the pound from Andree ; and Reeves having become bankrupt, the question was, Whether they might prove the whole debt under his commission ? and Lord Hardwicke held they could not, but that the 6s. in the pound must go in discharge of so much of the debt, and they could only prove the remaining 14s. The same point was ruled in *ex parte Ryswick*, 2 P. Williams 89. *ex parte Lefebvre*, 2 P. Williams 409.

See Cooke's Bankrupt Laws, 170.

So after a partial satisfaction, the holder must (a) not in an action take a verdict for more than the sum remaining due; if he do, the court will (b) either make him correct the verdict, and pay any expence the mistake may have occasioned, or grant a new trial.

In an action upon a Bill or Note, the Plaintiff is in general intitled to recover the money payable

(a) *Bacon v. Searles*, 1 H. Bl. 88. Upon a bill for 95*l.* 10*s.* The Drawer paid the Plaintiff 60*l.* 10*s.* and on an action against the acceptor *he*, the acceptor, paid the residue with the interest into court; the Plaintiff however proceeded, and after a verdict for the Defendant with liberty to the Plaintiff to move to enter a verdict for him, he contended that the acceptance having made the Defendant liable for the whole, and a personal contract not being divisible, he was intitled to recover, and to stand as a trustee for the Drawer, but the court held otherwise, and the verdict stood.

Pierfon v. Dunlop, Cowp. 571. In an action against the acceptor upon a bill for 300*l.* the Plaintiff took a verdict for the whole sum; the Defendant filed a bill against him in the Exchequer, and he admitted in his answer that he had previously received 180*l.* from the Drawer; this (among others) was urged as a ground for a new trial, and after cause shewn Lord Mansfield said, "The verdict is certainly taken for 180*l.* more than was due; there was no admission of this payment at the trial, which was very wrong, and has being the occasion of filing a bill in the Exchequer, therefore there ought to be a deduction of the money received, and a proportionable part of the interest, together with all the costs in the Exchequer;" and though the court discharged the rule for a new trial, they made the Plaintiff remit the 180*l.* with interest upon it from the time it was paid, and pay the costs of the bill and answer in the Exchequer.

However in *Johnson v. Kennion*, 2. Wils. 262. The Defendant drew a bill for 1000*l.* in favour of Benson or order, and Benson indorsed it to the Plaintiff; Benson paid the Plaintiff 232*l.* notwithstanding which he took a verdict against the Defendant for the whole 1000*l.* and upon a rule nisi for a new trial upon this ground the court are represented to have held that he did right; but in *Bacon v. Searles*, *supra*, Wilson J. considered the report inaccurate, and the authority questionable.

(b) See *Pierfon v. Dunlop*, *supra*.

thereby,

thereby, with (a) interest in some (b) cases from the date of the Bill or Note, but in general from the time when it would have been regularly payable, down to the time when (c) the Plaintiff will be intitled to final judgment, and (d) all incidental expences occasioned by non-acceptance or non-payment.

Thus, upon a Bill or Note payable on presentment, interest (e) must be computed from the presentment.

But a neglect to procure a protest upon any inland Bill for the payment of £20. upon which a protest might have been made, will perhaps (f) preclude the holder from recovering such interest

(a) D. Mar. 2d ed. 13. *Blaney v. Bradley*, Blackst. 761. By the court. "Interest is due on all bills of exchange and notes of hand payable at a day certain, or after demand, if payable on demand." See also Bunb. 129. 2^d Term Rep. 58.

(b) See *Cotton v. Horsfenden*, infra note (e)

(c) *Robinson v. Bland*, Burr. 1077. In an action upon a bill of exchange and for money lent a case was reserved, and the court was of opinion that the Plaintiff could not recover upon the bill but that he might for the money lent, but they took time to consider, with a view to settle the future practice, to what time the interest upon money lent should be computed, and afterwards determined that it should be computed to the time of giving judgment.

(d) Vide Mar. 2d ed. 13. In *Simmonds v. Parminter*, ante p. 84. note (a) the Plaintiff recovered interest, exchange and re-exchange, and in *Auriol v. Thomas*, post p. 93 note (a) 10s. per Pagoda in lieu of interest, exchange and all other charges.

(e) *Blaney v. Bradley*, supra note (a) *Cotton v. Horsfenden*, Pract. Reg. 357. The court held that in actions upon promissory notes, payable on demand, interest should be given from the time of the demand proved; but in this case, where it appeared upon the face of the note to be for money lent, interest should be given from the date of the note. 9 Mod. 138. By the court, interest upon a bill of exchange commences from demand made.

(f) By 3 and 4. Anne, c. 9. §. 5. it is provided, that if such (see §. 4. ante p. 73) Bill be not accepted by such under writing, or indorsement in writing, no drawer of any such inland bill shall be liable to pay any costs, damages, or interest thereupon unless such protest be made for non-acceptance thereof; and within

or expences from any person intitled to notice of the non acceptance or non-payment; from any other person (a) not.

The only incidental expence in the case of the person who made the presentment is the charge of the notice; in the case of any antecedent party, that of the return of the Bill or Note must be added.

Upon a foreign Bill the (b) re-exchange forms a part of the expence of the return, and let the Bill

within 14 days after such protest the same be sent, or otherwise notice thereof be given to the party from whom such bill was received, or left in writing at the place of his or her usual abode; and if such bill be accepted, and not paid before the expiration of three days after the said bill shall become due and payable, then no drawer of such bill shall be compellable to pay any costs, damages, or interest thereupon, unless a protest be made and sent, or notice thereof be given, in manner and form abovementioned. Nevertheless every drawer of such bill shall be liable to make payment of costs, damages, and interest upon such inland Bill, if any one protest be made of non-acceptance or non-payment thereof, and notice thereof be sent, given or left as aforesaid.

Brough v. Perkins, Lord Raym. 992. 6 Mod. 80. Salk. 131. In an action against the Drawer of an inland bill it was insisted upon for error that the bill was not stated to have been protested, sed per Holt, C. J. "The want of a protest is no bar to the action, but the act seems only to take away from the Plaintiff his interest or damages where he has made no protest, or to give the Drawer a remedy against him by way of action for the costs and damages," and the objection was overruled, and the judgment affirmed.

Harris v. Benson, Str. 910. In an action against the Drawer of an inland bill after an acceptance, Raymond C. J. ruled, that for want of a protest according to 9 and 10 Wm. III. c. 17. the Drawer could not be charged with interest.

(a) See *Rogers v. Stephens*, ante p. 72. note (a)

(b) *Mellish v. Simeon*, 2 H. Blackst. 378. A bill was drawn in London upon Paris, and negotiated through Holland, before it became due the French government prohibited the payment of any bill drawn in England, in consequence of which it was dishonoured and sent back through the different hands by which it had before been negotiated, to London; the
re-exchange

be returned through ever so many hands, the (a) Drawer is liable for the re-exchange upon each return.

And the (a) Drawer is liable for the re-exchange and every other expence arising from the non-acceptance or non-payment, notwithstanding the dishonour of the Bill is expressly ordered by the country on which it is drawn.

On the return of a Bill drawn here for the payment of Pagodas in the East Indies, the (b) practice is to allow for the sum payable by the Bill, interest, and all incidental charges, after the rate of 10s. for each Pagoda, and five per cent. thereon from the expiration of thirty days after the bill's dishonour; and it has been (b) determined that this practice was lawful, even where the price allowed for each Pagoda on the discount of the Bill was only six shillings and six-pence.

re-exchange between Paris and Holland raised the bill from 603*l.* 19*s.* 10*d.* to 905*l.* 13*s.* 9*d.* and the re-exchange between Holland and London to 913*l.* 4*s.* 3*d.* which the Plaintiff (the Payee) paid; and upon an action by him against the Drawer, Eyre C. J. left it to the Jury whether the Defendant was liable for the re-exchange occasioned by returning the bill through Holland, and they found that he was. An application was made for a new trial upon the ground that the Defendant was not liable for the re-exchange, because there was no default in him, the payment being prohibited by the government of France, but the court held it immaterial why the bill was not paid, that as it was not paid, he was liable to all the consequences, of which the re-exchange was one, and the rule was refused.

(a) See *Mellish v. Simcon*, ante p. 92 note (b).

(b) *Auriol v. Thomas*, 2 Term Rep. 52. Upon executing a writ of inquiry on a bill for the payment of 800 Star Pagodas returned protested from India, it appeared that the usage was to charge 10*s.* per Pagoda for bills returned from India protested, and five per cent after the expiration of thirty days from the notice to the Defendant of the bill's dishonour, which included all incidental charges, and that the Defendant had agreed to pay accordingly;

Under a Commission of Bankruptcy, the holder of a Bill or Note is not (*a*) intitled to any interest or charges accrued or incurred after the commission issued, nor where the act of bankruptcy to which the commission relates is ascertained, (*b*) to any accrued or incurred after that act of bankruptcy.

The action usually brought on account of a Bill or Note, is a special action of assumpsit thereon, but perhaps a special action (*c*) of debt, debt on an

accordingly; upon which the jury assessed the damages at 10*s.* per Pagoda with the five per cent. though the Plaintiff discounted the bill at the rate of 6*s.* 6*d.* a pagoda; that being then the current price. A rule nisi was obtained to set aside the inquisition on the ground that this allowance was exorbitant, and the agreement for it usurious; but the court, on cause shewn, thought otherwise, and discharged the rule.

(*a*) Anon. 1 Atk. 140. The question was whether the costs and charges incurred by protesting bills after a commission of bankruptcy issued could be proved; and Lord Hardwicke ordered that the costs of the protests arisen before the commission should be proved, but no part of the costs arisen afterwards.

(*b*) Ex parte Moore, 2 Bro. Cha. Cas. 597. Previous to 5th May 1785, Mrs. Tyler accepted several bills drawn upon her by Moore, and on that day committed an act of bankruptcy, but no commission issued until 9th March 1786; the bills became due between May 1785 and March 1786, and Mrs. Tyler not paying them, Moore did; he also paid 298*l.* for damages and charges, and the interest amounted to 46*l.* 10*s.* the commissioners allowed Moore to prove the sums for which the bills were drawn, but would not let him prove the interest, or the sum paid for damages and charges, upon which he petitioned the Chancellor, but the Chancellor held that as the time when the act of bankruptcy was committed was ascertained, he could not carry the damages beyond that time; and the petition was disallowed.

(*c*) In Anon. Hardr. 485. It was held that the Payee of a bill could not maintain debt against the acceptor, because there was no privity between them, and because the acceptance was a collateral undertaking only. In Welch v. Craig, Str. 680. 8 Mod. 373. it was held that debt will not lie upon a note; but it does not appear by or against what particular party that action was brought. In 1 Mod. Ent. 312. pl. 13. it is said that debt will lie against the maker of a note, not against the Indorser. And in Morgan's Precedents, 458. is an entry of a declaration in debt by the administratrix
of

indebitatus or an (a) indebitatus assumpsit, might be maintained thereon.

But instead of suing upon the Bill or Note, the holder may use it merely as evidence in another action.

A Bill is *prima facie* evidence of money lent by the payee to the drawer, and a Note of money (b) lent by the payee to the maker, and each consequently of money (c) had and received by the drawer or maker to the use of the holder, and of money paid by the holder to the use of the drawer or maker.

of the Payee of a note against the maker, and in *Rumball v. Ball*, 10 Mod. 38. An action of debt was brought upon a note.

(a) In *Brown v. London*, 1. Freeman 14. 1 Mod. 285. 1 Vent. 152. It was held that an *Indebitatus Assumpsit* would not lie upon the acceptance of a bill, *Twisden J. dubitante*. And there is a dictum to the like effect in *Comb.* 204. But in another report of *Brown v. London*, Lev. 298. the court is stated to have resolved in favour of the Defendant, because the custom was not set out in the count. In *Skin* 346. it is said it will only lie against the Drawer upon a bill importing to have been given for value received. In *Salk.* 125. 12 Mod. 37. it is laid down generally that an *Indebitatus Assumpsit* will not lie upon a bill; and in 12 Mod. 345. it is held that the Payee of a bill importing to have been given for value received, may maintain an *Indebitatus Assumpsit* against the Drawer.

(b) *Clarke v. Martin*, Lord Raym. 758. Holt C. J. expressed his disapprobation of declaring upon promissory notes (before the statute) as if they were within the custom of merchants; and assigned as a reason, "because there was so easy a method, as to declare upon a general *indebitatus assumpsit* for money lent." The same was laid down in 12 Mod. 380. and in *Burr.* 1525. Lord Mansfield says, "I do not find it any where disputed that an action upon an *indebitatus assumpsit* generally, for money lent, might be brought on a note payable to one or order." And see *Smith v. Kendall*, ante p. 11. note (b).

(c) *Grant v. Vaughan*, *Burr.* 1516. The bearer of a note payable to "Ship Fortune or bearer," brought an action upon it, and inserted a count for money had and received. Lord Mansfield left it to the jury whether such a note was negotiable, and whether the Plaintiff took it fairly, and they found
for

An Acceptance is (*a*) also evidence of money had and received by the acceptor to the use of the holder, and of money paid by the holder to the use of the acceptor, and (*b*) an Indorsement of money lent by the indorsee to the indorser.

Against the very person also from whom he received the Bill or Note the holder may sue for the consideration merely upon which the Bill or Note was given.

for the Defendant; but upon a rule nisi for a new trial, the Court was clear the first point should not have been left to the jury; and per Lord Mansfield, "Upon the count for money had and received, the case is clear beyond dispute; for undoubtedly an action for money had and received to the Plaintiff's use, may be brought by the bona fide bearer of a note payable to bearer: It was certainly money received for the use of the original advancer of it, and if so it is for the use of the person who has the note as bearer," and Wilmot and Yates Js. expressed themselves to the same effect. A new trial was granted, and the Plaintiff recovered.

(*a*) *Tatlock v. Harris*, 3 Term Rep. [174. In an action at the suit of the indorsee of a bill payable to a fictitious payee against the acceptor, who was also one of the drawers, the declaration contained counts for money paid and for money had and received; it appeared upon the evidence, that the Defendant was indebted to one of the indorsers and sent him this bill, for which he was credited in account, and that the Plaintiff paid *that* indorser the value of the bill: and upon a demurrer to the evidence the Court held that the Plaintiff was intitled to recover under the counts for money paid and money had and received, and he had judgment accordingly.

Vere v. Lewis, 3 Term Rep. 182. This was a similar action to that of *Tatlock v. Harris*, except that the Defendant was not one of the drawers, and there was no evidence that he received any value for the bill; upon which it was urged the Plaintiff could not recover upon the money counts; but the Court said the acceptance was evidence that he had received value from the drawers, and the Plaintiff had judgment.

(*b*) *Kesfebower v. Tims*, B. R. E. 22 G. III. Lord Mansfield held, that the indorsee of a note might maintain *indebitatus assumpsit* for money lent against the person who indorsed it to him.

In case of a transfer by delivery no (a) action can be maintained against the deliverer, except on account of such consideration.

Such (b) of these actions as are of the same species (as all the actions of assumpsit and all the actions of debt) may be joined in the same suit.

In that case, however, they lose the name of actions, which is a term properly applicable to all the causes of the suit collectively, and are called counts.

A special count upon a Bill or Note states in their order all the facts necessary to maintain the action.

To give a full idea of this count, and open the way to the observations necessary to be made upon it, I shall insert a comprehensive one in assumpsit upon a Foreign Bill, which will sufficiently elucidate those on Inland Bills or Notes and those in Debt.

Count in assumpsit upon a Foreign Bill.

London } John Mills v. Thomas Roper and Stephen
to wit. } Howe. For that whereas on (1) the 1st
day of January, 1789, at (2) London aforesaid, in
the parish of St. Mary le Bow, in the ward of Cheap,
certain persons using the stile and firm of Gaunt &
Co. according (3) to the usage and custom of mer-
chants from time immemorial used and approved of,
made (4) their certain Bill of Exchange in writing,
their (5) copartnership, stile, and firm aforesaid,

(a) See ante p. 31 and 41.

(b) Vide Blackst. 850. 1 Term Rep. 276.

being thereunto subscribed, bearing (6) date the day and year aforesaid, and (7) directed to one Henry Hunt, at Venice, in Italy, in parts beyond the seas, and (8) thereby requested the said Henry, at double usance, to pay that their first of exchange (second (9) and third of the same tenor not paid) to the said Thomas and Stephen, or (10) their order, a certain sum of foreign money called in the said Bill seven hundred ducats, value received, and then and there delivered the said Bill to the said Thomas and Stephen, which (11) said Bill the said Henry Hunt, afterwards, to wit on (12) the day and year aforesaid, at Venice, to wit, at London aforesaid, in the parish and ward aforesaid, on sight thereof, duly according to the usage and custom of merchants accepted; and the said Thomas and Stephen afterwards and before the payment of the said sum of money in the said Bill mentioned, or of any part thereof, to wit on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, by their certain indorsement in writing then and there made upon the said Bill, their proper hands being thereunto subscribed, according to the usage and custom of merchants appointed the (13) contents of the said Bill to be paid to one Peter White, or (14) his order, and then and there delivered the said Bill so indorsed to the said Peter, and (15) the said Peter afterwards, and before the payment of the said sum of money in the said Bill mentioned, or of any part thereof, to wit, on the day and year aforesaid, at
London

London aforesaid, in the parish and ward aforesaid, by his certain indorsement in writing then and there made upon the said Bill, his proper hand being thereunto subscribed, appointed the contents of the said Bill to be paid to the said John, and then and there delivered the said Bill so indorsed to the said John, of (16) which said indorsements the said Henry, afterwards to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice; and the said John in fact says, that (17) an usance mentioned in any Bill of Exchange drawn in London and payable in Venice, is, and at the several times aforesaid was, three months from the date of the said Bill, and no other time whatever; and (18) that afterwards, and when the said Bill had according to the tenor and effect thereof become payable, to wit on (19) the fourth day of July in the year aforesaid, at Venice aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid, the said Bill was duly, according to the usage and custom of merchants, shewn and presented to the said Henry for payment; and the said Henry was then and there requested to pay the said sum of money in the said Bill mentioned, but the said Henry did not then or there pay the said sum of money in the said Bill mentioned, or any part thereof, but wholly neglected and refused so to do; neither (20) did he pay the said second or third of exchange in the said Bill mentioned, or either of them; nor (21) did the said persons so using the stile and firm of Gaunt and Co. pay the said sum of money in the said Bill mentioned,

or any part thereof, or the said second or third of exchange; and thereupon the said John, afterwards to wit on the day and year last aforesaid, at Venice aforesaid, to wit at London aforesaid, in the parish and ward aforesaid, according to the usage and custom of merchants, caused the said Bill to be protested (22) for non-payment, of all which premises the said Thomas and Stephen afterwards, to wit on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had (23) notice; and by reason thereof, and by force of the usage and custom of merchants, became liable to pay to (24) the said John the said sum of money in the said Bill mentioned, or the value thereof, when (25) they the said Thomas and Stephen should be thereunto afterwards requested: and (26) being so liable, they the said Thomas and Stephen, in consideration thereof, afterwards to wit on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and to the said John then and there faithfully promised, to pay to him the said sum of money in the said Bill mentioned, or the value thereof, when they the said Thomas and Stephen should be thereunto afterwards requested: and (27) the said John avers, that the said 700 ducats in the said Bill mentioned, on the day and year last aforesaid were, and from thenceforth hitherto have been, and still are of great value, to wit of the value of £ of lawful money of Great Britain, that is to say at London aforesaid, in the parish and ward aforesaid; yet the said Thomas and Stephen (although often requested)

quested) have not nor hath either of them paid to the said John the said sum of money in the said Bill mentioned, or any part thereof, or the value thereof, or of any part thereof, but hath wholly neglected and refused, and still neglects and refuses so to do; wherefore the said John says he is injured, and hath sustained damage to the value of £ and therefore he brings suit, &c.

1. "On" &c. Upon a Bill or Note importing to be payable within a limited time after the date, and dated on a particular day, this (a) must be that day: on a Bill or Note importing to be payable within a limited time after the date, and not dated, the day (b) it issued, if it can be ascertained, otherwise (c) the first day the Plaintiff knew and can prove that it existed.

2. "At" &c. On a Foreign Bill this must be the place at which it bears date, but where the drawing of the Bill must be proved upon a trial, some place in England or Wales should be subjoined under a videlicet, thus, "at Venice in Italy, to wit, at London," &c.

(a) *Stafford v. Forcer*, 10 Mod. 511. cited Str. 22. In an action on a Note dated in 1704, Defendant pleaded that the cause of action did not accrue within six years; the Plaintiff replied a Bill filed in 1714, and that the cause of action accrued within six years of that time; and after verdict for the Plaintiff the court arrested the judgment, because it was stated that the note was made and dated in 1704, and then the cause of action must have accrued above six years before 1714.

(b) *Vide ante*. p. 68. note (a).

(c) *Vide Beawes*, §. 190. p. 439.

In

In an action against the drawer, the want of sub-joining such place may be taken advantage of by special demurrer to the count, but by special demurrer (*a*) only.

Inland Bills and Notes, though they may bear date at a particular place, may be alledged to have been made any where in England or Wales.

A Bill or Note made by a servant may be stated to have been made by the master, because that (*b*) is its legal operation.

3. "According" &c. 'Tis (*c*) not requisite to set out any part of the custom, and even a reference to it is (*d*) unnecessary.

In actions upon notes, instead of referring to the custom of merchants the Count refers to the statute.

4. "Made." Where a man signs his name upon a blank paper, stamped with a bill stamp, and delivers it to another to draw above the signature what bill he pleases thereon, and he draws one accordingly, the (*e*) bill may be stated to have been made by the person whose signature it bears.

(*a*) Vide 16 and 17 Car. II. c. 8. §. 1. 4 Anne c. 16. §. 1.

(*b*) Vide post p. 103.

(*c*) Soper v. Dible, Lord Raym. 175. In an action upon a Bill the Defendant demurred, because the declaration did not set out the custom, and the Court held it unnecessary, and that the better way was to omit it.

(*d*) This was determined in Ereskine v. Murray, Lord 1542. on error after judgment by default; and see Lord Raym. 88. Carth 83. 269, 270. Lutw. 279.

(*e*) Collis v. Emmet, 1 H. Blackst. 313. Emmet signed a piece of blank paper stamped with a bill stamp, and delivered it to Livesay & Co. that they might write above his signature such bill as they should please: they wrote one accordingly, and an action being brought thereon against Emmet, in which it was stated that he drew the bill, the Court thought the statement proper, and upon a special verdict stating these facts the Court gave judgment for the Plaintiff

5. "Their" &c. A signature, when essential, is (a) implied by the preceding word "made;" this allegation, therefore, is not strictly necessary.

6. "Bearing," &c. This allegation (b) also may be dispensed with; for it shall be intended, when the date is material, that a Bill or Note was dated when drawn.

7. "Directed," &c. In an action against the acceptor upon a Bill directed to him, or in his absence to I. S. the (c) conditional direction to I. S. need not be stated.

8. "Thereby," &c. A bill or note may be stated according to its legal operation.

Thus a joint or several Note, or a Note importing in the body of it to be made by several persons, but signed by one only, (d) may be stated as a several Note.

Plaintiff upon a count which alleged that the Bill was drawn by the Defendant.

(a) This was ruled upon demurrer in *Elliot v. Cooper*, Lord Raym. 1376. Str. 609. and *Smith v. Jarves*, Lord Raym. 1484. and on error after judgment by default in *Ereskine v. Murray*, Lord Raym. 1542.

(b) *De la Courtier v. Bellamy*, 2 Show. 422. In an action upon a foreign bill payable at double usance from the date thereof, the declaration stated that the Drawer on such a day drew the bill, but the date was not set forth; an exception was taken on this ground, but by the whole court, "it is well enough, we will intend it was dated when it was drawn;" judgment for the Plaintiff.

(c) *Anon.* 12 Mod. 447. A bill directed "to A. or in his absence to B." began thus. "Gentlemen pray pay, &c." A. accepted it, and in an action against him on his acceptance, the declaration described the bill as directed to A. without any notice of B. and Holt C. J. held it well.

(d) *Roberts v. Peake*, Burr. 323. A note signed by the Defendant alone but importing in the body of it to have been made by the Defendant and another person, was declared upon as the several note of the Defendant, and it was agreed that it might be declared upon according to its legal operation; but judgment was given for the Defendant upon another ground.

Nay, where the Plaintiff in an action against one of two makers of a joint or several Note, stated that the Defendant and another made their certain Note, &c. and thereby jointly or severally promised to pay, the court held it (a) well after judgment by default, notwithstanding as the truth of either member verifies a disjunctive proposition, the Note might have been joint.

And in an (b) action against one of the several makers of a joint Note, if it be stated as a several one, the objection can only be taken by Plea in abatement.

A Bill or Note importing to be payable to a fictitious person may be stated to be payable to the

(a) *Butler v. Maliffy*, Str. 76. In an action on a note the declaration stated that the Defendant and another did jointly or severally promise to pay; and upon demurrer, the court held it bad, and the Plaintiff obtained leave to discontinue. And in *Ovington v. Neale*, Str. 819. Lord Raym. 1544. The Plaintiff declared upon a note by which the Defendant and another jointly or severally promised to pay; and upon error the court of King's Bench held it bad, because the Plaintiff had not shewn a title to bring a separate action against the Defendant, for he only says he has this or some other cause of action; and judgment for the Plaintiff was reversed. However in *Rees v. Abbott*, Cowp. 832. The declaration upon a note stated that the Defendant and another made their note by which they jointly or severally promised to pay; and upon error after judgment by default, *Butler v. Maliffy* and *Ovington v. Neale*, were cited as in point; sed per Lord Mansfield, "If *or* is to be considered in this case as a disjunctive, the Plaintiff is to elect, and by the action he has made his election to consider the note as several; but in this case it is synonymous to *and*, and both and each promise to pay;" judgment affirmed.

(b) Per Buller J. *Rees v. Abbot*, supra. and see *Rice v. Shute*, Burr. 2611. and *Abbott v. Smith*, Blackst. 947.

person,

person in whose favour the Indorsement is made or to (a) Bearer.

A Bill or Note intended to have been made payable to A. that he might guarantee the payment to B. but through ignorance or mistake made payable to B. and by him indorsed to A. and then indorsed back by A. to B. may (b) be stated to have been made payable to A.

The Payee of a Bill or Note payable "to his order," may (c) state it to have been made payable to himself.

g. "Second," &c. In an action upon a Bill consisting of several parts, if the Plaintiff has each part, it may be doubted whether he need take notice of this condition, because all the parts collectively make an unconditional Bill; and where he has not

(a) Vide ante p. 11. note (a). In *Vere v. Lewis*, ante p. 11. note (a) Lord Kenyon, Ashurst and Buller Js. thought that the Plaintiff might recover on the count which stated that the Bill was drawn payable to bearer, and in *Collis v. Emmet*, ante p. 11. note (a) it was so decided.

(b) *Bishop v. Hayward*, 4 Term Rep. 470. A note payable to the Plaintiff or order was indorsed by him to the Defendant, and indorsed back again by the Defendant to him; these facts being stated on the declaration, the court arrested the judgment; it was suggested in the argument, that the Plaintiff had refused to take the note unless the Defendant put his name upon it, and that as he was made payee, his indorsement was mere form; and per Lord Kenyon, "had it been understood by all parties, that the note though nominally payable to the Plaintiff, was substantially to be paid to the Defendant, it should have been declared on according to its legal import; as was held in *Minet v. Gibson*; a name may be omitted in the declaration, if the legal operation of the instrument requires it."

(c) *Frederick v. Cotton*, 2 Show. 8. In an action against the acceptor of a bill it was objected in arrest of judgment that the bill was stated to be payable to the order of the Plaintiff, and no order was alleged; but the court resolved without any difficulty, that money to be paid to a man's order, was due to himself; and judgment was given for the Plaintiff.

each part, it should seem more correct to state that the Drawer made his certain Bill of Exchange in writing in three parts, his proper hand being subscribed to each of the said parts, bearing date, &c. and directed &c. and by one of the said parts requested, &c. but the form I have adopted is the usual one.

10. "Or Order," &c. In an action by the assignee of a Bill or Note, it is necessary to shew that the Bill or Note authorizes a transfer; in an action by the Payee (*a*) not.

11. Which," &c. Except in actions against acceptors, or on Bills payable within a limited time after sight, the acceptance need not be stated.

12. "On," &c. Where the time of payment depends on the presentment, this should be the very day of the presentment; in other cases, exactness as to the day is not requisite.

If however the Plaintiff allege in terms that the acceptance was made before the time limited by a Bill for its payment, it has been laid down that he will (*b*) be precluded from giving in evidence an

(*a*) See ante p. 11. and note (*a*) there. *Moore v. Paine*, Ann. 288. In error upon a judgment by default in an action on a note it was objected that it was only stated to be payable to the Plaintiff, and not *to his order*; but by Lord Hardwicke, that has been overruled often; the judgment was affirmed.

(*b*) *Jackon v. Pigott*, Lord Raym. 364. 12 Mod. 212. In an action against the acceptor of a bill, per Holt C. J. "If the Plaintiff declares that the acceptance was before the day appointed for the payment, and that the Defendant accepted to pay according to the tenor and effect of the bill, and it appears upon the evidence, that the acceptance in fact was after the day of payment, this would be against the Plaintiff."

acceptance

acceptance afterwards, but this may perhaps be doubted.

13. "The Contents," On an Indorsement for less than the full sum mentioned in the Bill or Note, the Plaintiff must (a) shew that the residue was paid.

14. "Or his Order," These (b) words are unnecessary.

A full and blank Indorsement are stated in the same manner.

15. "And the said Peter," &c. Every Indorsement essential to a transfer must be stated; unnecessary one may (c) be omitted.

Where the Plaintiff would omit an Indorsement, he should represent that which precedes it to have been made in favour of the person who is Indorsee upon that which follows.

Thus if a Bill payable to Allen's order be indorsed by him in Blank, and delivered to Bradley, and indorsed by Bradley to Carter, if Carter would omit stating Bradley's indorsement, he should state that Allen indorsed it immediately to him.

(a) *Hawkins v. Gardner*, 12 Mod. 213. The declaration stated that the Defendant drew a bill for 46*l.* 19*s.* payable to Blackman or order; and that Blackman indorsed 43*l.* 4*s.* thereof to the Plaintiff; the court held that an indorsement for part only of what was due upon the Bill was bad, and said, if Blackman had brought an action for part, he must have acknowledged satisfaction for the residue.

(b) *Vide ante* p. 12.

(c) In *Peacock v. Rhodes*, *ante* p. 32, note (a), the bill was payable to Ingham, and indorsed by him and by John Daltry; the Plaintiff declared as Indorsee of Ingham and recovered.

16. "Of which," &c. This (a) Allegation is unnecessary.

17. "That an usance," &c. A neglect to shew the duration of an usance is (b) fatal upon demurrer, (unless perhaps where it is alleged that the Bill was presented on the day it was payable) but upon demurrer only. (c).

18. "And that," &c. In an action against the maker of a Note or the acceptor of a Bill (except (d) on an acceptance at the house of a stranger) the presentment is never stated.

In an action against the Drawer of a Bill, or the Indorser of a Bill or Note, it is essential to state either that (e) the Bill or Note was presented,

(a) Anon. Pract. Reg. 358. In an action by an Indorsee of a note against the maker, the Defendant demurred, and shewed for cause, that it was not alleged that he had notice of the indorsement; but by the court, there is no need of notice. Judgment for the Plaintiff.

(b) Buckley v. Campbell, Salk 131. The Plaintiff declared upon a bill drawn at Amsterdam and payable in London at two usances, and did not shew what the two usances were; and the court gave judgment for the Defendant, because they could not take notice of foreign usances, which are longer in one place than another.

(c) Smart v. Dean, 3 Keb. 645. In an action on a bill from Paris payable here at double usance the Defendant pleaded payment, and on issue taken thereon, demurred, and objected that it was not alleged that double usance was two months; sed non allocatur, "It being a known term among merchants, that usance is a month, double two months; and being averred he had not paid in two months, it is well enough, the Defendant having waived advantage hereof by pleading payment;" but by Twysden J. had it been on Demurrer to the declaration, the Plaintiff should have averred a particular custom that usance signifieth a month. Judgment for the Plaintiff.

(d) Vide Bishop v. Chitty and Smith v. De la Fontaine, ante p. 78. note (a).

(e) Mercer v. Southwell, 2 Show. 180. The declaration against the Drawer of a bill, stated that the Drawee did not accept, but did not allege that

that the (a) Drawee or maker could not be found, or that the Defendant had he paid the Bill would have had no remedy against them.

If the Drawee or maker cannot be found it is (b) sufficient to aver generally that he was not found, without stating that any inquiry was made after him.

On an Allegation that the Bill or Note was presented, and acceptance or payment refused, the

that the bill had been shewn or tendered to him; and upon demurrer on this account, the omission was held fatal, for otherwise it would be in the Plaintiff's power to charge the Drawer, when perhaps the Drawee was ready to pay the money according to the tenor of the bill, if it had been tendered to him.

Rushton v. Aspinall, Dougl. 654.—680. In an action by the Indorsee of a bill payable three months after date against the Indorser, the declaration stated that the bill after the making thereof, to wit, on the same day and year afore said, (referring to the day the bill bore date) was presented for acceptance and accepted, yet the Drawer although afterwards, to wit, on the same day and year afore said requested, did not pay, of which the Drawer, the Payee, and first Indorser and the Acceptor had notice; by reason whereof Defendant became liable to day, and being so liable on the same day and year promised to pay. After verdict and judgment for Plaintiff, the court of King's Bench upon a writ of error brought, held the declaration bad, because it did not shew that payment was demanded of the acceptor when the bill became due, or that notice was given to the Defendant of his refusal to pay, and that though it was stated that he had promised to pay, that promise was stated as an inference of law, and the declaration did not contain premises from which that inference could be drawn; and the judgment was reversed.

(a) Vide ante p. 58.

(b) Starke v. Cheefman, Carth. 509. In an action upon a bill drawn by the Defendant on C. C. of Radcliffe London the declaration merely stated that the said C. C. at Radcliffe afore said or elsewhere within the kingdom of England was not found, and after judgment by default it was objected in arrest of final judgment that it was not shewn that any inquiry had been made after him, but it was answered, that it was according to the custom among merchants, and the common form in the like cases, and judgment was given for the Plaintiff.

Plaintiff

Plaintiff cannot (a) give in evidence that the Drawee or maker could not be found.

In an Action against the acceptor of a Bill or maker of a Note payable on demand, a (b) presentment need not be stated.

19. "On," &c. Unless there is an express averment that the presentment was made on the day when the Bill or Note became payable, this (c) must be that very day; where there is such averment, exactness as to the day is I apprehend, immaterial.

20. "Neither," &c. Where the Plaintiff states that the sum of Money mentioned in the Bill was not paid, this allegation is not (d) necessary.

(a) R. Leeson v. Pigott, Sittings after Trinity 1788.

(b) Rumball v. Ball, 10 Mod. 38. Debt upon a note by which the Defendant acknowledged himself indebted and promised to pay on demand; it was urged in arrest of judgment, that it was not alleged that there had been a demand; but the court held the allegation unnecessary.

(c) See Rushton v. Aspinall, ante p. 109.

(d) Starke v. Cheeseman, Carth. 509. The declaration stated that the Defendant made three bills of exchange, all of the same date and contents, and by the second required the Drawee (the first and third of the said bills not being paid) to pay &c. that the Drawee was not to be found, and the said sum of Money in the said bill mentioned was not paid; after judgment by default, it was objected in arrest of judgment, that there was no averment, that the first and third bill were not paid, but it was answered, that the allegation that the money in the said bill mentioned was not paid, supplied the want of the averment, because the sum was the same in all the bills, and the Plaintiff had judgment.

East v. Effington, Lord Raym. 810. Salk. 130. Assumpsit against the acceptor of the following bill, "Pray pay this my first bill of exchange, the second and third not being paid;" after verdict for the Plaintiff, it was moved in arrest of judgment, because there was no averment that the second and third were not paid; sed non allocatur, for per curiam, though it had been ill upon Demurrer, yet it is aided by the verdict; for if the second or third had been paid, the jury would have found non assumpsit.

21. "Nor,"

21. "Nor," &c. This (a) allegation is unnecessary.

22. "Protested," &c. The protest (b) need not be stated in an action on an Inland Bill, in an action on a foreign one the Plaintiff (c) must either state it or (d) shew that it was not necessary; but the omission can (e) only be taken advantage of by a special Demurrer.

In stating the protest if the Plaintiff allege, "*that (f) he protested the Bill or caused it to be protested,*" it will be unobjectionable if the Defendant pleads over.

Wegersloff v. Keene, Str. 214. In assumpsit against the acceptor upon a bill by which the Drawer requested him to pay "that his first bill (his second not being paid)" the declaration stated that the Defendant promised to pay the money, but had not, the Defendant pleaded an insufficient plea, and upon demurrer to the replication objected that there was no averment that the second bill was not paid, but the objection was overruled, and judgment given for the Plaintiff.

(a) Vide post c. 6.

(b) See Brough v. Parkins, ante p. 75 note (b).

(c) Solomons v. Staveley, cited Dougl. 2d ed. 684. n. 144. The court held on the authority of the precedent in Dunstar v. Pierce, Lill. Ent. 55. that the neglect to allege a protest in an action on a foreign bill, was matter of form only, and could not be taken advantage of on a general demurrer.

(d) In Rogers v. Stephens, supra p. 78. note (d) Lord Kenyon and afterwards the court held a protest for non-acceptance not necessary to support an action against the Drawer, because it appeared he had no effects in the hands of the Drawee.

(e) Witherby v. Sarsfield, 1 Show. 125. The declaration upon a foreign bill stated that the Plaintiff "protested it, or caused it to be protested;" the Defendant pleaded that he was not a merchant, and upon demurrer had judgment. A writ of error was brought, and it was then for the first time urged that the allegation that the Plaintiff protested the bill, or caused it to be protested, was uncertain, but the court thought it well enough, reversed the judgment below, and then judgment was given for the Plaintiff.

23. "Notice,"

23. "Notice," If the Defendant is *primâ facie* intitled to notice, it is essentially necessary to state that he had (a) notice, or to shew that he was not intitled thereto.

24. "To the said John," In an action upon a Bill or Note stated upon the count to be payable to the order of the Plaintiff, it is sometimes (b) usual, though (c) unnecessary, to insert here an allegation that the Plaintiff made no order ; but the (d) better way upon a Bill or Note made so payable is to state according to the legal operation that it was made payable to the Plaintiff, and then this allegation would be impertinent.

25. "When," &c. In an action against the acceptor of a Bill or maker of a Note not payable immediately upon presentment, instead of alleging that the Defendant became liable, and promised to pay *when he should be thereunto afterwards requested*, he is stated to have become liable, and promised to pay *according to the tenor and effect of the Bill and acceptance* in the one case, and *of the Note* in the other.

26. "And," &c. This clause is unnecessary in an action against either the (a) acceptor of a Bill

(a) See *Rushton v. Aspinall*, ante p. 109.

(b) It was done in *Fisher v. Pomfret*, Carth. 403.

(c d) Vide *Frederick v. Cotton*, ante p. 105. note (c).

(e) *Wegersloff v. Keene*, Str. 214. In assumpsit against the acceptor an objection was taken to the promise as stated ; sed per Fortescue J. "The Plaintiff need not set out any promise. *Lowther v. Conyers*, which was upon a promissory note, and they left out *super se assumpsit*, and yet it was held well enough, for the law raises a promise."

or the maker of a Note; and it may be doubted whether (a) it is essential in any other.

27. "And the said," &c. This averment is not, I apprehend, ever necessary; the want (b) of it is certainly cured by verdict.

(a) *Starke v. Cheefeman*, Carth. 509. Salk. 128. After judgment by default in an action against the Drawer of a foreign bill it was objected in arrest of judgment, that it was not stated in the declaration that the Defendant promised to pay the money after the protest made, but it was answered, that the law did raise the promise upon the custom of merchants, and therefore it was not necessary to lay an actual promise, and the Plaintiff had judgment.

(b) *Simmonds v. Parminter*, 1 Wils. 185. 4 Bro. Parl. Cas. 604. The declaration upon two foreign bills for the payment of 4000 and 5000 dollars did not state what their value was, and after a demurrer this was urged as a ground to arrest the judgment; but the court gave judgment for the Plaintiff, and upon a writ of error that judgment was affirmed.

C A P.

C A P. VI.

Of the Evidence necessary to intitle the Plaintiff to recover upon a Bill or Note, and the Defence which may be set up against him.

TO recover in respect of a Bill or Note upon a count for money lent, money paid, or money had and received, the Plaintiff must prove such of those facts which are not admitted, as he ought to state upon a special count; and upon a special count, he must prove such of the facts which are not admitted as appear upon the face of that count necessary.

An acceptance admits the ability of the Drawer to make the Bill, and, if made after sight of the Bill, his (a) signature; an indorsement admits the

(a) *Wilkinson v. Lutwidge*, Str. 648. In an action against the acceptor of a Bill, Raymond C. J. allowed the Plaintiff to read the bill without proving the Drawer's hand because he thought the acceptance a sufficient acknowledgement on the part of the Defendant, but he said it would not be conclusive; and if the Defendant could shew the contrary, the reading the bill should not preclude him. See *Cooper v. Le Blanc* post 117, note (c).

Jenys v. Fowler, Str. 946. In an action against the acceptor of a bill, Raymond C. J. held it was not necessary for the Plaintiff to prove the Drawer's hand, and on the Defendant's offering to call witnesses to swear they believed it was not the Drawer's hand, the Chief Justice would not admit the evidence, and he inclined strongly that actual proof of forgery would not excuse the Defendant.

Price v. Neale, Burr, 1354. Blackst. 390. Two forged bills were drawn upon

ability and (a) signature of every antecedent party.

But an acceptance, though made after sight of an indorsement does not admit the ability or (b) signature of the Indorser.

upon the Plaintiff, which he accepted and paid; on discovering the forgery he brought this action for money had and received to recover back the money, but on a case reserved, the court held it would not lie; and Lord Mansfield said, "It was incumbent on him to have been satisfied before he accepted or paid them, that the bills were the Drawer's hand;" and in *Smith v. Chester*, 1 Term Rep. 655. Buller J. says, "When a Bill is presented for acceptance, the acceptor looks to the hand writing of the Drawer, which he is afterwards precluded from disputing, and it is on that account that he is liable, even though the bill is forged."

(a) *Lambert v. Pack*, Salk. 127. Lord Raym. 443. 12 Mod. 244. Holt. 117. In an action against the Indorser of a bill, Holt C. J. ruled that it was not necessary to prove the Drawer's hand, for though the bill was forged, the Indorser would be liable.

Williams v. Seagrove, 2 Barnard. B. R. 82. A rule was made absolute for delivering up a note to an Indorsee, though it was proved to have been forged, upon the ground that he might notwithstanding bring actions upon it against the Indorsers. See also Str. 442.

(b) *Smith v. Chester*, 1 Term Rep. 654. In an action by the Indorsee of a bill against the acceptor, the Plaintiff was non-suited because he could not prove the hand writing of the first Indorser, though the indorsement was on the bill at the time of the acceptance. A motion was made to set aside the non-suit on the ground that as the indorsement was on the bill when it was accepted, the acceptance admitted it, but the court thought it did not, because the acceptor only looks to the hand-writing of the Drawer, and that he is afterwards precluded from disputing. Rule discharged.

Carvick v. Vickery, Dougl. 630—653. N. 134. ante p. 37. note (b). A bill payable to the order of Father and Son, who were not partners, was indorsed by the Son only, after which it was presented, and the Drawee wrote upon it a direction to his Banker to pay it. In an action against the Drawee the question was, Whether the Indorsement by the Son alone was sufficient? and Willes J. inclined to think the order to the Banker was a recognition of the Indorsement. But Ashhurst and Buller Js. thought not. However in *Hankey v. Wilson*, Say. 223. in an action by the Indorsee of a bill against

In an action therefore against the acceptor of a Bill or maker of a Note, the Plaintiff must prove the Defendant's signature, and the necessary indorsements; and in the former case, if the acceptance was made without sight of the Bill, the signature of Drawer; in an action against the Drawer of a Bill, or the Indorser of a Bill or Note, he must prove the Defendant's signature, the necessary indorsements between him and the Plaintiff, the presentment, the non-acceptance or non-payment, and the notice for not giving it.

In the case of a foreign Bill, if the Plaintiff is bound to prove notice, he must also prove a protest.

After a transfer by delivery by a person not intitled to make such transfer, and subsequent holder must (a) prove that either he or some intermediate person between him and the person who so transferred it took the Bill or Note *bonâ fide*, and gave a valuable consideration for it.

the acceptor, there was no actual proof of the hand writing of one of the Indorsers, but it appearing that the Indorsement was upon the bill when the Defendant accepted it, and that he promised to pay it; Ryder C. J. left the case to the jury, who found for the Plaintiff, and upon a rule to shew cause why there should not be a new trial, the court thought it a question for the jury, Whether the acceptance and promise did not amount to an admission that the name of every Indorser was authentic? and refused the rule.

(a) Vide Anon. *Miller v. Race*, *Grant v. Vaughan*, ante p. 35. note (a). *Peacock v. Rhodes*, ante p. 32. note (a).

It

It is laid down in (a) some cases, that in an action against the Indorser of a Bill, the Plaintiff must prove an application to the Drawer for Payment; but that he need (b) not is now very fully settled.

A confession of his signature is sufficient evidence (c) against the party making it, but (d) not against any other party; and it is (e) sufficient, though made pending a treaty for a compromise.

In an action against the Drawer of a lost Bill, Holt, C. J. (f) held proof that the Defendant owned he had made the Bill sufficient.

(a) Vide Burr. 671.

(b) This was decided after two arguments in the case of a foreign bill in *Bromley v. Frazier*, Str. 441. and in the case either of a foreign or inland bill, but which does not appear in *Lawrence v. Jacob*, Str. 515. and in the case of an inland bill, *Heylin v. Adamson*, Burr. 669.

(c) *Cooper v. Le Blanc*, Str. 1051. The Plaintiff on discounting a note sent to the Defendant to know whether an indorsement upon it was his, and the Defendant said it was, and the note would be paid when due; he would notwithstanding have given evidence by similitude of hands that the indorsement was a forgery; but Lord Hardwicke would not allow it; he seemed inclined however to admit proof of actual forgery, but the Defendant could not adduce it, and the Plaintiff had a verdict. See *Wilkinson v. Lutwidge*, ante 114. note (a).

(d) *Hemmings v. Robinson*, 1 Barnes, 317. In an action by the Indorsee of a note against the maker, it was reserved as a point whether the acknowledgement of an Indorser was sufficient evidence to prove his indorsement; and the court held not. See *Gray v. Palmer*, p. 118. note (c).

(e) *Waldridge v. Kennison*, Espinasse 143. In an action against two as acceptors of a bill, the only evidence of the signature by one was an admission he made pending a treaty for settling the cause; it was objected that this admission ought not to be received in evidence, because it was made under the faith of a compromise; but Lord Kenyon held that the admission of a hand-writing might be received in evidence, though it was made under faith of a compromise, and he admitted it accordingly.

(f) This was the case of *Hart v. King*, 12 Mod. 309.

So

So in an action against an Indorser, proof that the Defendant admitted to have received a Bill corresponding with that upon which the action was brought, that after issue joined he had declared that he came to town to hasten the trial of a cause brought against him on an indorsement he had made upon a Bill, and that he carried the cause down by proviso, was (a) held sufficient.

But in an action by the Indorsee of a Bill against the Drawer, proof that one of the Indorsers had confessed his signature (b) is insufficient, and in an action against several Drawers, Indorsers or Acceptors, an admission upon the pleadings by one of his signature will (c) not exempt the Plaintiff from proving it against the others, if they contest it.

(a) Dale v. Lubbock, 1 Barnard. B. R. 199. In an action against an Indorser the evidence was, that he had written a letter stating that he had received a bill from A. upon B. bearing date such a day, and payable to him or order six months after date (in all which circumstances the bill stated in the letter corresponded with the bill declared upon) but not mentioning the sum, that he had said he came up to town to hasten on the trial of an action brought against him on an indorsement he had made upon a bill, and that in fact he carried down the cause by proviso, and Raymond C. J. held this sufficient evidence to prove that the Defendant indorsed the bill stated; and the jury found for the Plaintiff.

(b) Hemmings v. Robinson, p. 117. note (d).

(c) Gray v. Palmer, Espinasse 125. Action against James Palmer, John Palmer and Hodgson, as makers of a note; Hodgson pleaded a judgment recovered, and each of the Palmers non-assumpsit; upon the trial on the non-assumpsits the Plaintiff proved the subscription by each of the Palmers, and there rested his case. The Palmers contended that he ought to prove Hodgson's subscription also, but the Plaintiff insisted that *that* was admitted by the plea of nul-tiel record; Lord Kenyon, however, held that it was only admitted as against Hodgson not against the Palmers, and that the Plaintiff could not recover against them without proving it.

The

The signature of a Partner or Servant, importing to have been made on the Partnership or Master's account, is to be considered as the signature of the (a) Partnership or Master.

On a signature by a Servant, the Servant's authority must be proved.

An authority by Parol is (b) sufficient.

Subsequent assent is (c) evidence of precedent authority.

Usual employ is evidence (d) of a general authority ; and a general authority is supposed to continue until its determination is notorious.

Therefore after the discharge of a servant usually employed, a (e) man will be bound by his signature until his discharge is generally known.

Where notice is to be sent by the post, proof of putting it into the post is (f) sufficient.

Production of the instrument is (g) sufficient evidence of a protest.

(a) Vide *Pinkney v. Hall*, Lord Raym. 175. *Smith v. Jarves*, Lord Raym. 1484. *Carvick v. Vickery*, Dougl. 630. n. 134.

(b) 12 Mod. 564.

(c) Comb. 450.

(d) 12 Mod. 346. *Malynes*, B. 3. c. 5. §. 6. p. 264. 10 Mod. 110.

(e) Vide *Beawes*. §. 231. p. 445. *Molloy*. B. 2. c. 10, §. 27.

(f) *Saunderson v. Judge*, ante p. 77. note (b).

(g) *Anon.* 12 Mod. 345. To prove a protest the Plaintiff produced an instrument attested by a Notary Public, and though it was insisted that he should prove this instrument, or at least give some account how he came by it, Holt C. J. ruled that it was not necessary.

On a judgment by default in an action upon a Bill or Note, no (a) evidence need be given.

The court (b) will therefore upon such judgment, even in assumpsit, if the Bill or Note is for the payment of British Money, refer it to an officer to ascertain the sum due for principal, interest, and charges, and give the Plaintiff final judgment without a Writ of Inquiry.

(a) *Bevis v. Lindfell*, Str. 1149. On executing a writ of inquiry in an action on a Note, the Plaintiff did not produce the subscribing witness, but offered other evidence that it was the Defendant's hand, and the court held that sufficient, "For the note being set out in the declaration is admitted, and the only use of producing it is to see whether any payment is indorsed upon it."

Mills v. Lyne. B. R. H. 26 G. III. On a writ of inquiry in an action upon a note, the Sheriff directed the jury to give nominal damages only because the Plaintiff could not prove the note. Lawrence insisted that the Plaintiff was bound to produce the note (because a receipt of part might have been indorsed thereon) and to prove the Defendant's signature; but per Buller J. "If you had paid part you might have pleaded it, but you have let judgment go for the whole;" and the court set aside the inquisition.

Green v. Hearne, 3 Term Rep. 301. Upon a rule nisi to set aside an inquisition against the acceptor of a bill of exchange, it was urged that the bill though produced before the jury was not proved, but the court held that by suffering the judgment the Defendant admitted the acceptance of the bill, and that he was liable to its amount, and Buller J. said, "the only reason of producing the bill is to see whether any part of it is paid."

(b) *Shepherd v. Charter*, 4 Term Rep. 275. The Defendant having suffered judgment by default in an action on a bill, the Plaintiff obtained a rule to shew cause why it should not be referred to the master to compute what was due for principal and interest. The rule was opposed upon the general ground that a reference in such cases was improper, but the court thought otherwise, and Grose J. observed that the Judges in the Common Pleas gave the case before them great consideration before they referred the question to one of the Prothonotaries, and the rule was made absolute. The same had previously been done in *Rashleigh v. Salmon*, 1 H. Bl. 252. *Andrews v. Blake*, 1 H. Bl. 529. *Longman v. Fenn*, 1 H. Bl. 541. and it is now every day's practice in the King's Bench and Common Pleas; but not in the Exchequer, Vide *Chilton v. Harborn*, 1 Anstr. 249.

But

But the (a) court will not refer it, if the Bill or Note is for the payment of Foreign Money.

The only species of defence to an action in respect of a Bill or Note necessary to be mentioned, is that which is founded upon the (b) want of a consideration for giving or transferring it, or an illegality in the consideration upon which it is given or transferred.

The (c) debt of a third person, or a debt barred by (d) the statute of limitations, by a discharge under an Insolvent or fugitive Act, by a (e) Bankruptcy and Certificate, or by a composition, is a good consideration.

But the consideration of (f) signing a Bankrupt's

(a) *Maunsell v. Lord Massareene*, 5 Term Rep. 87. The court discharged a rule nisi for referring it to the master to compute principal, interest and costs upon a bill of exchange, because the bill was for the payment of 200*l.* Irish money.

(b) *Jeffries v. Austen*, Str. 647. In an action by the Payee of a note against the Maker, Eyre C. J. of the Common Pleas allowed the Defendant to prove, that it was given as a reward in case the Plaintiff procured the Defendant to be restored to an office, and that the Defendant was not restored, and on this proof the Defendant had a verdict.

(c) *Popplewell v. Wilson*, Str. 264. A. gave a note to pay so much to B. for a debt due from C. to B.—and on error it was objected that the debt of a third person was no consideration; but the court thought otherwise, and the judgment was affirmed.

(d) Vide *Lord Raym.* 389. 6 Mod. 309. *Burr.* 2630. *Blackst.* 703 *Cowp.* 290.

(e) *Trueman v. Fenton*, *Cowp.* 544. *Birch v. Sharland*, 1 Term Rep. 715. *Cowp.* 290.

(f) *Sumner v. Brady*, 1. H. Bl. 647.

R

Certificate,

Certificate, or withdrawing a Petition (*a*) against it, or (*b*) joining in the acceptance of a composition, is illegal.

Past (*c*) seduction is a good consideration ; future (*d*) prostitution an illegal one.

Dropping (*e*) a criminal prosecution, or suppressing evidence thereon, a (*f*) recommendation to an office in the King's Household though of a private nature, and not within the statute of the 5th and 6th Edw. III. a (*g*) smuggling an (*h*) usurious or a (*i*) stock jobbing contract, is an illegal consideration.

So money lost by gaming, (except (*k*) in some

(*a*) By 5th G. II. c. 30. §. 11. It is enacted, that every bill, note, contract, agreement or other security whatsoever, to be made or given by any bankrupt, or by any other person, unto or to the use of or in trust for any creditor or creditors, or for the security of the payment of any debt or sum of money due from such bankrupt at the time of his becoming bankrupt, or any part thereof, between the time of his becoming bankrupt and such bankrupt's discharge, as a consideration, or to the intent to persuade him, her, or them to consent to or sign any such allowance or certificate, shall be wholly void and of no effect; and the monies thereby secured or agreed to be paid shall not be recovered or recoverable, and see *Smith v. Bromley*, Dougl. 670.

(*b*) *Spurrett v. Spiller*, 1 Atk. 105. *Cockshott v. Bennett*, 2 Term Rep. 763. *Jackson v. Lomas*, 4 Term Rep. 166. *Cooling v. Noyes*, 6 Term Rep. 253.

(*c*) *Annandall v. Harris*, 2 P. Wms. 432. *Cray v. Rooke*, Forrester 153. *Turner v. Vaughan*, 2 Wils. 339.

(*d*) *Walker v. Perkins*, Burr. 1568.

(*e*) 3 P. Wms. 279. *Collins v. Blantern*, 2 Wils. 349.

(*f*) *Harrington v. Du Chatel*, Bro. C. C. 114.

(*g*) *Guichard v. Roberts*, Blackst. 445.

(*h*) 12 Ann. St. 2. c. 16. post 126. note (*a*).

(*i*) 7 Geo. II. c. 8.

(*k*) 9 Ann. c. 14. §. 9.

part

part of a Royal Palace in which the King is then actually resident, the Freehold and inheritance of which part is in the Crown, and which is not in lease) or betting on the sides of persons to gaming, money knowingly lent for such gaming or betting, or money lent at the time and place of such play to any person either then gaming or betting, or who shall, during the play, play or bet, is (a) an illegal consideration.

Cricket, (b) a Horse Race, or (c) a Foot Race against time, is a game: insuring (d) in the lottery not.

No person can insist upon a want of consideration, who has himself received one, nor can it ever be (c) insisted on, if the Plaintiff or any intermediate party between him and the Defendant took the Bill or Note *bonâ fide*, and upon a good consideration.

(a) 9 Ann. c. 14. §. 1.

(b) Jeffryes v. Walter, 1 Wils. 220.

(c) Lynall v. Longbotham, 2 Wils, 36.

(d) Lewis v. Piercy, 1 H. Bl. 29.

(e) Morris v. Lee, B. R. H. 26 G. III. In an action by the Indorsee against the maker of a note thirteen years old, the Defendant obtained a rule nisi to set aside a judgment by default on an affidavit by a third person, that he believed the Defendant was swindled out of the note. An affidavit was made on the other side, that the Plaintiff took the note *bonâ fide*, and gave a valuable consideration for it; and the court held, that however improperly it might have been obtained, a third person who took it fairly and gave a consideration for it, was intitled to recover, and discharged the rule. And see Com. 43. 1 Term Rep. 40. 2 Term Rep. 71. 2 Atk. 182. Bull. Nisi Prius, 274.

In those cases in which a Defendant *might* insist upon a *total* want of consideration if there really was none, he (a) may shew that the consideration does not extend to all the money payable by the Bill or Note, and (a) the Plaintiff shall only recover for the residue.

Wherever the Defendant might insist that there was no consideration, he may insist that the consideration was illegal; and in those cases in which the Legislature has declared that the illegality of the consideration shall make the Bill or Note absolutely void, he (b) may insist upon such illegality though the Plaintiff or some party between him and the Defendant took the Bill or Note

(a) *Barber v. Backhouse*, Peake, 61. In an action on a bill of exchange by the Payee, the Defendant paid part of the money into court, and it appeared upon the trial that there was no consideration for the other part. Law however urged that the payment of the money into court admitted the bill was good for part, and if it was good for part, it was good in toto; but Lord Kenyon declared himself clearly of a contrary opinion upon which the jury found for the Defendant, and this case being afterwards mentioned by Lord Kenyon in the course of argument, Law said he was perfectly satisfied with the decision.

Ledger v. Ewer, Peake, 216. In an action by the Payee of a bill against the acceptor, the consideration appeared to be that the Plaintiff had taken the Defendant into partnership; but on the Defendant's friend's advice he broke off the connection; there was evidence of fraud on the Plaintiff's part in drawing the Defendant into the engagement, which Lord Kenyon left to the jury; but he told them if they were against the Defendant on the evidence of fraud, they should take into consideration the damages the Plaintiff had really sustained by the non-performance of the contract, and were not obliged to find the whole amount of the bill; the jury however found for the Defendant.

(b) Vide *Bowyer v. Bampton*, and *Lowe v. Waller*, *infra* p. 125. note (c) 126. note (a).

bonâ

bonâ fide and gave a valuable consideration for it.

Those cases are, where the consideration is either (a) wholly or in part (b) signing a Bankrupt's Certificate, money (c) lost by gaming as aforesaid, or betting on the sides of persons so gaming, money knowingly lent for such gaming

(a) *Robinson v. Bland*, Burr. 1077. A bill of exchange was partly for money lent at the time and place of play, and partly for money lost at play; and on a case reserved the court held that the Plaintiff could recover nothing upon the bill, but that he might recover the money lent on a count for money lent.

(b) Vide 5th G. II. c. 30. §. 11. ante p. 121. note (f).

(c) By 9th Anne c. 14. §. 1. It is enacted that all notes, bills, or other securities whatsoever, given, granted, drawn or entered into, or executed by any person or persons whatsoever, where the whole or any part of the consideration of such conveyances or securities shall be for any money, or other valuable thing whatsoever, won by gaming or playing at cards, dice, tables, tennis, bowls, or other game or games whatsoever, or by betting on the sides or hands of such as do game at any of the games aforesaid, or for the reimbursing or re-paying any money knowingly lent, or advanced for such gaming or betting as aforesaid or lent or advanced at the time and place of such play, to any person or persons so gaming as aforesaid, or that shall during such play, so play or bet, shall be utterly void, frustrate, and of none effect, to all intents and purposes whatsoever.

Bowyer v. Bampton, Str. 1155. Several notes given by Bampton to Church for money lent to game with, were indorsed by Church to the Plaintiff for a full and valuable consideration, and the Plaintiff had no knowledge that any part of the consideration from Church to Bampton was money lent for gaming; and after two arguments upon a case reserved the court held that the Plaintiff could not maintain the action; for it would be making the notes of use to the lender, if he could pay his debts with them, and it would tend to evade the act, on account of the difficulty of proving notice on an Indorsee; and the Plaintiff would not be without remedy, for he might sue Church on his indorsement.

or

or betting, money lent at the time and place of such play to any person either then gaming or betting, or who shall, during the play, play or bet, or (a) money lent on an usurious contract.

But if the consideration upon which a Bill or Note was made is not illegal, an illegality in the consideration upon which it is afterwards transferred will be no (b) defence, if the Plaintiff took it *bonâ fide*, and upon a good consideration.

(a) By 12th Ann. St. 2. c. 16. It is enacted, that no person or persons whatsoever, upon any contract, take directly or indirectly, for loan of any monies, wares, merchandize, or other commodities whatsoever, above the value of £5. for the forbearance of £100. for a year, and so after that rate for a greater or lesser sum, or for a longer or shorter time; and that all contracts, and assurances whatsoever, made after the time aforesaid, for payment of any principal, or money to be lent or covenanted to be performed upon or for any usury, whereupon or whereby there shall be reserved or taken above the rate of £5. in the hundred, as aforesaid, shall be utterly void.

Lowe v. Waller, Dougl. 768—736. The Defendant was acceptor of a bill, which he gave to Harris and Stratton upon an usurious contract; Harris and Stratton indorsed it to the Plaintiff for a valuable consideration, and the Plaintiff had no notice of the usury; upon a case reserved the question was whether the usury between Harris and Stratton and the Defendant was a defence against an Indorsee who took the bill *bonâ fide*, and paid a valuable consideration for it; and after time taken to consider, the court held it was, and though Lord Mansfield had a wish the law should turn out in favour of the Plaintiff, the court found the words of the act too strong, and could not get over the case of *Bowyer v. Bampton*, Str. 1155.

(b) *Daniel v. Cartony, Espinasse*, 274. Scott drew a bill on the Defendant payable to his own order, and discounted it with Greenfill, who took £18. per cent discount; it was afterwards indorsed to the Plaintiff, and Defendant could not impeach *that* transaction; and per Lord Kenyon, This is no defence; had the note been originally given on an usurious transaction, or for an usurious consideration, it would have been void in the hands of even

By suffering a judgment by default, the (a) Defendant loses the opportunity of objecting to the sufficiency of the consideration.

a bonâ fide holder; but usury in any intermediate transaction respecting it, can never make it void in the hands of a bonâ fide Indorsee, where there was no usury in the original transaction.

(a) *Shepherd v. Charter*, ante p. 120. note (b) A reference to the master to see what was due for principal and interest on a bill was opposed on an affidavit impeaching the consideration. Sed per Buller J. this evidence would not be admissible before a jury, and the rule was made absolute.

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